

Exhibit E

FW: Bluefin: Summer Subcontract

From: "Grygier, Colleen T" <grygiect@westinghouse.com>
To: "Affinito, Howard J." <affinihj@westinghouse.com>, "Durham, David C" <durhamdc@westinghouse.com>, "Kutchenriter, Kevin W." <kutchekw@westinghouse.com>, "Baird, Timothy J" <bairdtj@westinghouse.com>, "Weir, Thomas J." <weirtj@westinghouse.com>, "Young, J Brad" <youngjb@westinghouse.com>
Date: Tue, 22 Dec 2015 14:55:18 -0500
Attachments: Subcontract Agreement (VC Summer) Final Draft (fluor 22 Dec 2015).docx (163.5 kB)

All: mark-up to Subcontract from Fluor...

From: Stephen.Sanford@Fluor.com [mailto:Stephen.Sanford@Fluor.com]
Sent: Tuesday, December 22, 2015 2:48 PM
To: Grygier, Colleen T
Cc: Terry.L.Legal.Brown@Fluor.com
Subject: Re: Bluefin: Summer Subcontract

I worked through the draft and am including my work through in this email. The one issue I am not clear upon is the wording for the incentive fee. I started to mark it up and stopped. There are a few outstanding issues but not many in this document. Thanks

Stephen R. Sanford | **FLUOR Corporation** | Managing General Counsel | stephen.sanford@fluor.com | O +1.281.263.5714

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SUBCONTRACT AGREEMENT

(V.C. SUMMER)

between

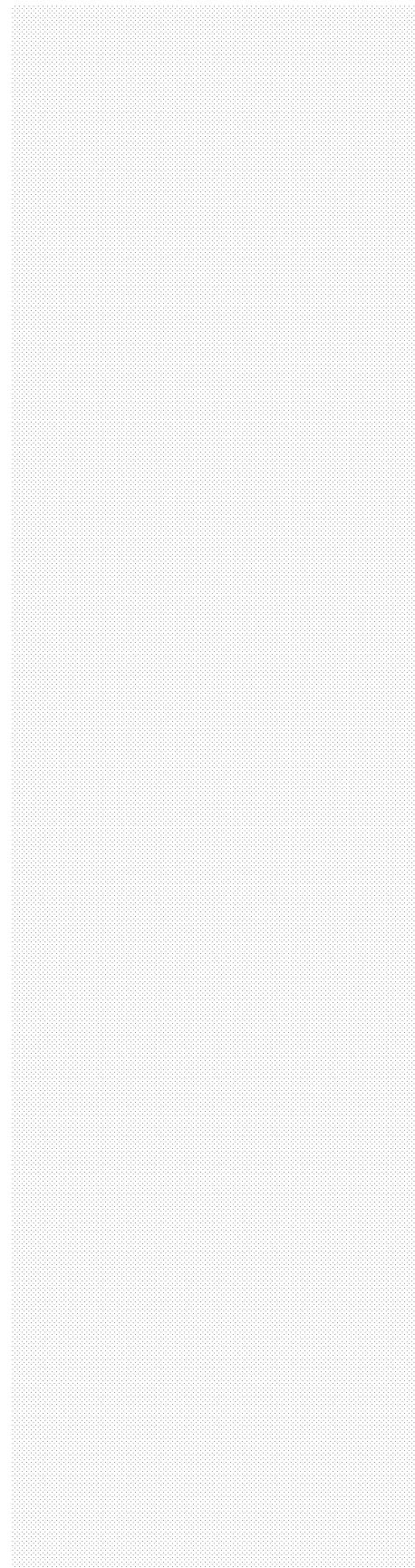
CB&I STONE & WEBSTER, INC.

and

FLUOR ENTERPRISES, INC.

dated as of

____ December 2015



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Fluor Draft dated 20-22December 2015

TABLE OF CONTENTS

ARTICLE I DEFINITIONS.....	2
ARTICLE II SUBCONTRACTOR'S OBLIGATIONS.....	11
ARTICLE III CONTRACTOR'S OBLIGATIONS	17
ARTICLE IV CHANGE ORDERS.....	18
ARTICLE V TERM.....	20
ARTICLE VI FEES AND EXPENSES; PAYMENT TERMS	20
ARTICLE VII COST SAVINGS BONUS	23
ARTICLE VIII INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP	25
ARTICLE IX PROPRIETARY INFORMATION.....	26
ARTICLE X REPRESENTATIONS AND WARRANTIES	27
ARTICLE XI INDEMNIFICATION	28
ARTICLE XII LIMITATION OF LIABILITY.....	33
ARTICLE XIII LIENS.....	34
ARTICLE XIV SUSPENSION AND TERMINATION	35
ARTICLE XV INSURANCE	41
ARTICLE XVI NON-SOLICITATION	42
ARTICLE XVII SAFETY; INCIDENT REPORTING	42
ARTICLE XVIII QUALITY ASSURANCE	46
ARTICLE XIX TESTING	50
ARTICLE XX STAGES OF COMPLETION	51
ARTICLE XXI WARRANTY.....	52
ARTICLE XXII QUALIFICATIONS AND PROTECTION OF ASSIGNED PERSONNEL.....	55

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22December 2015

ARTICLE XXIII RECORDS.....	58
ARTICLE XXIV UNCONTROLLABLE CIRCUMSTANCES.....	59
ARTICLE XXV ANTI-BRIBERY/KICKBACK.....	59
ARTICLE XXVI GOVERNING LAW; WAIVER OF JURY TRIAL; CERTAIN FEDERAL LAWS	60
ARTICLE XXVII DISPUTE RESOLUTION.....	60
ARTICLE XXVIII MISCELLANEOUS.....	64

EXHIBITS

A	Division of Responsibility
B	Description of Facility
C	Milestones, Milestone Dates, Incentive Fee
D	Key Personnel
E	Major Subcontractors
F	Description of Site
G	Limits of Authority, Resources Mapping
H	Contractor Standard Purchasing Terms & Conditions
I	Contractor List of Permits
J	Subcontractor Rate Sheets
K	Subcontractor Standard Travel & Expense Policy
L	[Not Used]
M	Form of Invoice
N	Form of Proprietary Information Agreement

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**SUBCONTRACT AGREEMENT
(VC Summer)**

This Subcontract Agreement (this "**Agreement**"), dated as of ____ December 2015, is by and between CB&I Stone & Webster, Inc., a Louisiana corporation having a principal place of business address in Charlotte, North Carolina (the "**Contractor**") and Fluor Enterprises, Inc., a corporation organized and existing under the laws of the State of California, having its principal business address at 100 Fluor Daniel Drive, Greenville, SC 29607-2770 (the "**Subcontractor**"). Each of Contractor and Subcontractor are referred to generally in this Agreement as a "**Party**" and collectively as the "**Parties**".

Recitals

- (A) WHEREAS, Subcontractor understands and acknowledges that Westinghouse Electric Company LLC is currently in the process of completing the stock purchase acquisition of Contractor as its construction partner as a method of resolving disputes that have arisen in connection with the construction of two ongoing AP1000 plant nuclear new build projects in Georgia and South Carolina (the "**US Projects**"), and that such acquisition is anticipated to achieve closing by January 4, 2016 ("**Closing**");
- (B) WHEREAS, Contractor desires to retain Subcontractor to provide certain construction, bulk commodities procurement and project management services for the US Projects after Closing;
- (C) WHEREAS, Subcontractor entered into a binding Memorandum of Understanding, dated 27 October 2015, to form the basis and framework for future detailed discussions regarding the US Projects scope in order to enable the Parties to work together toward more definitive contractual arrangements; and
- (D) WHEREAS, the Parties have now completed such detailed discussions regarding the US Projects scope and wish to memorialize the agreed terms and conditions of such discussions in a formal contract.

In consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

Comment [11]: Fluor Comment: Closing needs to occur at the end/beginning of a craft pay period.
WEC Response: We are pushing for this, but we cannot guarantee.

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Fluor Draft dated 20-22 December 2015

**ARTICLE I
DEFINITIONS**

“Actual Costs” means:

(a) costs incurred by Subcontractor, Subcontractor Personnel and Affiliates in performing Subcontractor’s Scope as more particularly described in Exhibit F, including, but not limited to (i) Subcontractor’s personnel costs for Personnel in the home office and field approved by Contractor and assigned to the Project, based on a cost-based, non-fee bearing rate sheets for the home office and field to be provided to and agreed with Contractor, (ii) costs incurred under a Secondment Agreement; and (iii) costs incurred under any third party contracts and subcontracts, in each case that have been approved by Contractor, which approval shall not be unreasonably withheld or delayed, and will be directly passed through on invoices submitted by Subcontractor to Contractor without any additional fee (collectively, the **“Scope Costs (VC Summer)”**); and

(b) procurement costs incurred by Subcontractor, Subcontractor Personnel[, Seconded Personnel to be transferred to Subcontractor after the Effective Date] and Affiliates as agents of the Contractor and as more particularly described in Exhibit F after the Effective Date, including, but not limited to (A) costs relating to procurement of construction materials and commodities and (B) direct material costs, and (C) other Project-related expenses, including those anticipated under Section 6.03 in each case which will be directly passed through on invoices submitted by Subcontractor to Contractor without any additional fee (collectively, the **“Procurement Costs (VC Summer)”**),

in each case, (i) with respect to Subcontractor Personnel, excluding corporate general and administrative costs or similar mark-up but including indirect expenses of the power business line of Subcontractor, such as overhead costs and (ii) with respect to Seconded Personnel, setting rates substantially similar to costs of such Seconded Personnel incurred by Contractor immediately prior to Closing.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. “Affiliate” shall not include American Equipment Company, Inc. and TRS Staffing Solutions, Inc.

“Agreement” has the meaning set forth in the preamble.

“Background Information” means all information, including Intellectual Property and Proprietary Information, that is owned or controlled by a Party and that existed prior to the Effective Date or that results from any activity, development or other work, that is independent from, or unrelated to, this Agreement, whenever performed

[APG]

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Fluor Draft dated 20-22 December 2015

(including concurrently with this Agreement), and all improvements or derivations thereto.

"Business Day" means every calendar day other than Saturday, Sunday or a legal holiday recognized by the State of South Carolina.

"Change" has the meaning set forth in **Section 4.01**.

"Change in Law" means (a) the formal written adoption by a Government Authority of a new statute, regulation, requirement or code that did not exist as of the Effective Date; or (b) where the NRC is the involved Government Authority, the NRC's official issuance or promulgation, after the Effective Date, of a final and official version of Regulatory Guides (NUREGs), Branch Technical Positions, Standard Review Plans, Interim Staff Guidance, Bulletins, Orders, or written directives, in which NRC acknowledges a new regulatory requirement or a change to or interpretation of an existing requirement that did not apply before the Effective Date.

"Change Order" means the written agreement regarding a Change contemplated by **Section 4.01**.

"Claim" has the meaning set forth in **Section 27.01**.

"Closing" has the meaning set forth in the Recitals.

"Complete Procurement Cost" has the meaning set forth in **Section 7.02(f)**.

"Complete Scope Cost" has the meaning set forth in **Section 7.02(e)**.

"Construction and Installation Tests" shall mean the construction and installation tests described in **Section 19.01** and the DOR.

"Contractor" has the meaning set forth in the preamble.

"Contractor Equipment" means any equipment, systems, cabling or facilities provided by Contractor and used directly or indirectly in the provision of the Work.

"Contractor Interests" means Contractor and its (or their) members, and its (or their) respective Affiliates, successors and assigns, including any tier of the foregoing, its (or their) subcontractors (including suppliers) of any tier, and employees of all the foregoing, this being limited to any activity connected in any way with this Agreement.

"Contractor Materials" any documents, data, know-how, methodologies, software and other materials provided to Subcontractor by Contractor, including computer programs, reports and specifications.

"Contractor Subcontract Manager" has the meaning set forth in **Section 3.01(a)**.

"Day" as used in this Agreement means a calendar day and includes Saturdays, Sundays and legal holidays.

[APG]

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Fluor Draft dated 20-22 December 2015

"Deliverables" means all documents, information, product and materials identified in the DOR that are prepared by or on behalf of Subcontractor and required to be delivered to Contractor by Subcontractor in the course of performing the Work.

"Dispute Resolution Board" or "DRB" has the meaning set forth in **Section 27.02.**

"DOL" has the meaning set forth in **Section 17.06(b).**

"DOR" means the Division of Responsibility between Contractor and Subcontractor, attached hereto as Exhibit A.

"Effective Date" has the meaning set forth in **Section 5.01.**

"EPC Contract" means the Engineering, Procurement and Construction Agreement between Owner and Westinghouse, dated May 23, 2008, for the design, engineering, procurement and installation of equipment and materials and construction and testing of the Facility.

"Equipment" means machinery, computer hardware and its associated software, apparatus, components, articles, materials (excluding bulk, construction and permanent plant commodities), systems and structures and items of any kind that will become a permanent part of the Facility to be provided by the Subcontractor to the Contractor under this Agreement, but excluding nuclear fuel.

"Facility" means the Unit or Units and the ancillary facilities, as more fully described in Exhibit B.

"Fee" means an amount equal to one hundred million dollars (\$100,000,000) payable in connection with amounts invoiced by Subcontractor at the rate of four percent (4%) of Actual Costs and costs managed by Subcontractor in respect of vendor, subcontractor and procurement subcontracts pursuant to its agency scope set forth in Section 2.02(n) set forth in each invoice, to be assessed and paid on a per invoice basis, subject to the Fixed Project Fee.

"Final Completion" has the meaning set forth in **Section 20.03(a).**

"Fixed Project Fee" means an amount equal to the sum of amounts earned as Fee and the Incentive Fee, such amounts, in aggregate, not to exceed {two} hundred million dollars (\$200,000,000), as may be adjusted in accordance with the terms of this Agreement.

"Foreground Information" means all information, including Intellectual Property and Proprietary Information that is developed for the Project under this Agreement and which does not constitute Background Information.

"Good Industry Practices" any practices, methods, standards and acts engaged in and generally acceptable in the nuclear power industry in the United States that, at a particular time, in the exercise of reasonable judgment in the light of facts known at the

[APG]

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Fluor Draft dated 20-22 December 2015

time a decision was made could have been expected to accomplish the desired result consistent with good business practices, reliability, economy and safety. Good Industry Practices are not intended to require the optimum practice, method or act, to the exclusion of all others, but is rather a spectrum possible practices, methods or acts.

“Government Authority” means any federal, state, county, city, local, municipal, foreign or other government or quasi-governmental authority or any department, agency, subdivision, court or other tribunal of any of the foregoing that has jurisdiction over Contractor, Subcontractor, the Facility or the activities that are the subject of this Agreement.

“Guaranteed Substantial Completion Date” means August 31, 2019 with respect to Unit 2 and August 31, 2020 with respect to Unit 3.

“Hazardous Materials” means any substance or material regulated or governed by any Governmental Authority, or any substance, emission or material now or hereafter deemed by any court of Government Authority having jurisdiction to be a “regulated substance”, “hazardous substance”, “toxic substance”, “pesticide”, “hazardous waste” or any similar classification, including by reason of deleterious properties, ignitability, corrosivity, reactivity, carcinogenicity, or reproductive toxicity, and shall include those substances defined as a “source”, “special nuclear” or “by-product” material pursuant to Section 11 of the AEA (42 U.S.C. Section 2014 *et seq.*) and those substances defined as “residual radioactive material” in Section 101 of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7901 *et seq.*).

“Hold Points” means a critical step in a manufacturing, construction or testing process beyond which Contractor or a Subcontractor cannot proceed except pursuant to the provisions in **Section 18.04(b)**.

“Incentive Fee” means an amount equal to one hundred million dollars \$100,000,000 payable in installments by Contractor to Subcontractor, in addition to Fee, upon achievement of Milestones by the corresponding Milestone Date, as described more fully in Exhibit C.

“Insolvent” means, with respect to a Person, that such Person (i) makes any general assignment or any general arrangement for the benefit of creditors, (ii) files a petition or otherwise commences, authorizes, defaults as to or acquiesces in the commencement of a case, petition, proceeding or cause of action under any bankruptcy, insolvency or similar law for the protection of debtors or creditors, or has such a case, petition, proceeding or cause of action involuntarily filed or commenced against it and such case, petition, proceeding or cause of action is not withdrawn or dismissed within sixty (60) Days after such filing, (iii) otherwise becomes adjudicated a debtor in bankruptcy or insolvent (however evidenced), (iv) is unable (or admits in writing its inability) generally to pay its debts as they become due, (v) is dissolved (other than pursuant to a consolidation, acquisition, amalgamation or merger), (vi) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a

[APG]

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Fluor Draft dated 20-22 December 2015

consolidation, acquisition, amalgamation or merger), (vii) seeks, or becomes subject to the appointment of an administrator, provisional liquidator, conservator, assignee, receiver, trustee, custodian or other similar entity or official for all or substantially all of its assets, (viii) has a secured party take possession of all or substantially all of its assets or has a distress, levy, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed discharged, stayed or restrained, in each case within sixty (60) Days thereafter, (ix) causes or is subject to any event with respect to which, under the applicable laws of any jurisdiction, said event has an analogous effect to any of the events specified in clauses (i) to (viii) (inclusive); or (x) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Intellectual Property” or **“IP”** means any and all know-how, works, information, data, processes, methodologies, techniques, documents, reports, specifications, software whether in object or source code form and associated documentation, maskworks, inventions, designs, or other intangible assets that are protected by intellectual property rights (e.g. by patents, including patent applications, provisional applications or any division, continuation, continuation-in-part, reissue, renewal or extension thereof as well as any foreign counterpart), utility models, industrial designs, trademarks, service marks, trade names, trade secrets, copyrights, moral rights and any other form of proprietary protection afforded by law to intellectual property and information, irrespective of whether they are registered or unregistered and irrespective of the object in which they are incorporated, or any applications for any of the foregoing, that arise or are enforceable under the laws of the United States or any other jurisdiction or any bi-lateral or multi-lateral treaty regime.

“Invitees” means, with respect to a Person, such personnel or other Persons as have been permitted entry onto the Site by such Persons.

“Key Personnel” means any Subcontractor Personnel identified in Exhibit D as being key in a Statement of Work.

“Late Payment Interest Rate” means, as of a particular date, the effective “prime rate” of interest published on that date in The Wall Street Journal, and generally defined therein as “the base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks” plus two percent (2%). If The Wall Street Journal is not published on a date for which the interest rate must be determined, the prime interest rate shall be the prime rate published in The Wall Street Journal on the nearest-following date on which The Wall Street Journal was published. If The Wall Street Journal discontinues publishing a prime rate, the prime interest rate shall be the prime rate announced publicly from time to time by Bank of America, N.A. or its successor.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of

[APG]

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Fluor Draft dated 20-22 December 2015

any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“Liens” means any lien, mortgage, pledge, encumbrance, charge, security interest, option, right of first refusal, other defect in title or other restriction of any kind or nature.

“Losses” mean all claims, actions, lawsuits, losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“Major Subcontractor” means subcontractors (or category of subcontractors) identified on Exhibit C.

“Nuclear Incident” means any occurrence that causes bodily injury, sickness, disease or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source material, special nuclear material, or by-product material which is used in connection with the operation of the Facility. “Source material”, “special nuclear material” and “by-product material”, as applicable to this Agreement, shall have those meanings assigned by the AEA.

“OCIP” has the meaning set forth in **Section 15.05**.

“OSHA” has the meaning set forth in **Section 17.03**.

“Owner” means South Carolina Electric & Gas Company, for itself and as agent for the South Carolina Public Service Authority.

“Permitted Subcontractor” has the meaning set forth in **Section 2.02(k)**.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“Personnel” means, with respect to a Person, such Person's employees, officers, directors, agents, personnel, representatives, subcontractors of any tier, vendors and any other third party independent contractors with whom such Person has contracted.

“PIA” has the meaning set forth in **Section 9.01**.

“PQAP” means the Project Quality Assurance Program, comprised of (a) the quality assurance program approved by the NRC for use in connection with all Work performed in respect of the Facility and (b) the project quality assurance program interface plan which sets out AP1000 project-specific clarifications and modifications with respect to the quality assurance program.

“Procurement Costs (VC Summer)” has the meaning set out in paragraph (b) of the definition of “Actual Costs”.

[APG]

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Fluor Draft dated 20-22 December 2015

"Procurement Costs (Vogtle)" has the meaning set out in paragraph (b) of the definition of "Actual Costs" in the Vogtle EPC Contract, which shall be identical to the definition of the same term in this Agreement.

"Project" means the AP1000 plant nuclear new build project at the Virgil C. Summer Nuclear Generating Station in Jenkinsville, South Carolina, which is owned and to be operated by Owner.

"Project Milestone" shall mean each of the project milestones identified in Exhibit C.

~~**"Project Milestone Date"** shall mean each date corresponding to an identified Project Milestone in Exhibit C.~~

"Proprietary Information" has the meaning set forth in **Section 9.01(b)**.

"Purchase Order" means each purchase order issued by Contractor to Subcontractor authorizing Subcontractor to perform the Work as described in the DOR.

"Risk of Loss Date" has the meaning set forth in **Section 20.01(c)**.

"Sales Tax" means any sales, use or similar tax imposed on Contractor, Subcontractor or Owner with respect to the Work by any Government Authority.

"Scope Costs (VC Summer)" has the meaning set forth in paragraph (a) of the definition of "Actual Costs" plus the Fee.

"Scope Costs (Vogtle)" has the meaning set forth in paragraph (a) of the definition of "Actual Costs" in the Vogtle EPC Contract, which shall be identical to the definition of the same term in this Agreement plus the Fee.

"Screening Measures" has the meaning set forth in **Section 22.01**.

"SCWE" has the meaning set forth in **Section 17.06(b)**.

"Seconded Employees" means all of Contractor's Personnel that have been seconded to Subcontractor by Contractor to perform Work at Subcontractor's direction pursuant to the Secondment Agreement.

"Secondment Agreement" means the Transitional Seconding Agreement for Non-Union Employees by and between Contractor and Subcontractor dated as of December [], 2015, and any other secondment agreement that may be entered into between the Parties after the Effective Date, with respect to the secondment to Subcontractor by Contractor of the Seconded Employees.

"Site" means the premises (or portion thereof) owned or leased by Owner on which the Facility shall be located, and including any construction laydown areas, as more specifically described in Exhibit F.

"Specifications" means the design specifications and drawings set forth in Exhibit [], and changes thereto, prepared by Contractor or its subcontractors for the

[APG]

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Fluor Draft dated 20-22 December 2015

design, engineering and construction of the Facility in accordance with the provisions set forth in **Article IV**.

"Subcontractor" has the meaning set forth in the preamble.

"Subcontractor's Scope" means the scope of work assigned to Subcontractor under the Division of Responsibility, attached hereto as Exhibit A.

"Subcontractor Equipment" means any equipment, systems, cabling or facilities provided by or on behalf of Subcontractor and used directly or indirectly in the provision of the Work.

"Subcontractor Personnel" means all employees, Affiliate Personnel and Permitted Subcontractors, if any, engaged by Subcontractor to perform the Work, but specifically excluding Seconded Personnel.

"Subcontractor Subcontract Manager" has the meaning set forth in **Section 2.02(b)(i)**.

"Substantial Completion" has the meaning set forth in **Section 20.02(a)**.

"Target Procurement Cost (VC Summer)" has the meaning set forth in **Section 7.02(b)**, as may be adjusted in accordance with this Agreement.

"Target Scope Cost (VC Summer)" has the meaning set forth in **Section 7.02(a)**, as may be adjusted in accordance with this Agreement.

"Target Procurement Cost (Vogtle)" has the meaning set forth in the Vogtle EPC Contract, which shall be identical to the definition of the term "Target Procurement Cost (VC Summer)" in this Agreement.

"Target Scope Cost (Vogtle)" has the meaning set forth in the Vogtle EPC Contract, which shall be identical to the definition of the term "Target Scope Cost (VC Summer)" in this Agreement.

"Taxes" means all present and future license, documentation, recording and registration fees, all taxes (including income, gross receipts, unincorporated business income, payroll, sales, use, personal property (tangible and intangible), real estate, excise and stamp taxes), levies, imports, duties, assessments, fees (customs or otherwise), charges and withholdings of any nature whatsoever, and all penalties, fines, additions to tax, and interest imposed by any Government Authority.

"Term" has the meaning set forth in **Article V**.

"Third Party Claim" means any Claim by any Person other than Owner or Contractor.

"Third Party Information" means all information, including Intellectual Property and Proprietary Information, which is used by any Party for the Project under this Agreement.

Comment [ss2]: Jude advises he did not agree to this change. The logic is we need to know what are the specifications we have to follow to perform construction. They do not have to be physically attached if they are in a secure file in .pdf format such that they are identifiable and cannot be amended without our knowledge and consent.

[APG]

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Fluor Draft dated 20-22 December 2015

“**Turnover**” has the meaning set forth in **Section 20.01(a)**.

“**Uncontrollable Circumstance**” means any event or condition beyond the reasonable control of a Party despite its reasonable efforts to prevent, avoid, delay or mitigate such acts, events or occurrences, which prevents, impacts or delays a Party from performing its obligations under this Agreement, including but not limited to the following:

(c) acts of God, including landslide, lightning, earthquake, fire, explosion, storm, flood, unusual or severe weather conditions, including hurricanes, tornadoes; and any precautionary actions taken in connection therewith;

(d) acts of a public enemy, war, blockade, embargo, insurrection, riot or civil disturbance, sabotage or similar occurrence or any exercise of the power of eminent domain, police power, any act of terrorism, epidemic, condemnation or other taking by or on behalf of any public, quasi-public or private entity; any strike or other concerted labor actions; and any precautionary action or evacuation taken in connection with any of the foregoing;

(e) the suspension, termination, interruption, denial, delay in obtaining or failure of renewal or issuance of any government approval relating in any way to the Work that is not the result of willful or negligent action by the Party claiming the Uncontrollable Circumstance;

(f) an order or other action by a Government Authority that is not the result of willful or negligent action by the Party claiming the Uncontrollable Circumstance;

(g) a labor shortage that is not the result of the failure of the Party claiming the Uncontrollable Circumstance to take commercially reasonable steps to plan for the needed work force in advance of the project staffing (e.g., prepare estimates of the labor requirements and advertise, recruit and train in accordance with Good Industry Practices); or

(h) delays due to accidents in shipping or transportation provided that such accidents are not the result of negligence or willful misconduct by the Party claiming the Uncontrollable Circumstance.

“**Unit**” means each AP1000 Nuclear Power Plant to be constructed at the Site. “First Unit” or “Unit 2” refers to the first such Unit to be constructed and “Second Unit” or “Unit 3” refers to the second such Unit to be constructed.

“**US Projects**” has the meaning set forth in Recital (A).

“**Vogtle EPC Contract**” means the Engineering, Procurement and Construction Agreement between Georgia Power Company, for itself and as agent for Oglethorpe Power Corporation (an electric membership corporation), Municipal Electric Authority of

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Georgia and the City of Dalton, Georgia, acting by and through its Board of Water, Light and Sinking Fund Commissioners, as owners, and Westinghouse, dated April 8, 2008, for units 3 & 4 at the Vogtle Electric Generating Plant Site in Waynesboro, Georgia.

“**Westinghouse**” means Westinghouse Electric Company LLC, a limited liability company organized and existing under laws of the State of Delaware, having its principal business address at 1000 Westinghouse Drive, Cranberry Township, PA 16066.

“**Witness Points**” means a critical step in a manufacturing, construction or testing process that is subject to witnessing by Contractor or its authorized representative in accordance with the procedures set forth in **Section 18.04(b)**.

“**Work**” mean the Subcontractor’s Scope to be undertaken by Subcontractor as described in Exhibit A of this Agreement, including full construction, bulk commodities procurement (procurement of construction and permanent plant commodities) and construction management of the Project, but excluding design engineering, management of the quality assurance program, procurement of modules and permanent plant engineered equipment, and construction scope currently performed by Westinghouse (including, but not limited to, the containment vessel and selected yard tanks).

“**Work Warranty Period**” has the meaning set forth in **Article XXI**.

ARTICLE II

SUBCONTRACTOR'S OBLIGATIONS

Section 2.01 Subcontractor shall provide the Work as described in more detail in Exhibit D to Contractor in accordance with the terms and conditions of this Agreement.

Section 2.02 The Subcontractor shall:

- (a) at all times, perform the Work in accordance with the limits of authority set forth in Exhibit G;
- (b) subject to the prior written approval of Contractor, not to be unreasonably withheld or delayed, appoint:
 - (i) a Subcontractor employee to serve as a primary contact with respect to this Agreement and who will have the authority to act on behalf of Subcontractor in connection with matters pertaining to this Agreement (the “**Subcontractor Subcontract Manager**”); and
 - (ii) Key Personnel, who shall be suitably skilled, experienced and qualified to perform the Work;

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(c) maintain the same Subcontractor Subcontract Manager and other Key Personnel throughout the Term except for changes in such personnel due to:

(i) Contractor's request pursuant to **Section 2.02(d)**; or

(ii) the resignation or termination of such Personnel or other circumstances outside of Subcontractor's reasonable control;

(d) upon the written request of Contractor for cause, promptly replace the Subcontractor Subcontract Manager and any other Subcontractor Personnel; provided, that any replacement Personnel, including Key Personnel, shall be suitably skilled, experienced and qualified to perform the Work;

(e) before the date on which the Work is to start, obtain, and at all times during the Term maintain, all necessary licenses and consents and comply with all relevant Laws applicable to the provision of the Work, including with respect to all Subcontractor Personnel; provided, however, that Subcontractor shall not be liable for any such licenses or consents in respect of Seconded Personnel or that are required by applicable Law to be obtained by Contractor or Owner;

(f) prior to any Subcontractor Personnel performing any Work hereunder: (i) ensure that such Subcontractor Personnel have the legal right to work in the United States; (ii) as a reimbursable cost, conduct background checks on such Subcontractor Personnel, which background checks shall comprise, at a minimum, a review of credit history, references and criminal record, in accordance with state, federal and local law; and (iii) provide to Contractor, a resume for each Key Personnel named in Exhibit D; provided, however, that Subcontractor shall not be liable for any such obligations in respect of Seconded Personnel or that are required by applicable Law to be obtained by Contractor or Owner;

(g) comply with, and ensure that all Subcontractor Personnel comply with, all rules, regulations and policies of Contractor and Owner that are communicated to Subcontractor in writing, including security procedures concerning systems and data and remote access thereto, building and Site security procedures, including the restriction of access to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures, and Subcontractor acknowledges that Owner shall have the right to deny access to the Site to any Subcontractor Personnel for failure to comply with such practices and procedures;

(h) except to the extent applicable Laws require a longer retention, Subcontractor shall maintain all technical documentation relative to the Equipment for a period of three (3) years after Final Completion;

(i) Owner or its authorized representative shall be permitted to examine and audit Subcontractor's records and books, and subcontractors' records and books where permitted by contract, related to Actual Costs and Subcontractor shall not be required to keep records of or provide access to those of its costs covered by the allowances, fixed

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

rates, lump sums or of costs which are expressed in terms of percentages of other costs. The right to initiate any audit shall expire, with respect to any such cost, three (3) years after the cost was incurred. Such audit shall provide Owner with a reasonable opportunity to verify that all costs and charges have been properly invoiced in accordance with the terms of this Agreement. If an audit by the auditor reveals charges to or paid by Contractor as charges or fees which are incorrectly charged, then Contractor shall be entitled upon demand for a refund from Subcontractor of such amounts, together with interest at the Late Payment Interest Rate per annum, measured from the date of the incorrect invoice until the date the refund is paid. Likewise, if any audit or if any examination by any state or local taxing agency reveals additional Sales Tax to be imposed upon Subcontractor for under collection of tax from Contractor on a taxable sale, then Subcontractor shall be entitled, upon demand, to a payment from Contractor of all such amounts, together with any interest and penalties imposed by any state or local taxing agency. Notwithstanding anything in this **Section 2.02** to the contrary, Contractor shall not be restricted from any audit rights, including any right to conduct audits directly without any intermediary, which it is required to have in order to comply with applicable Laws, including the regulations of the NRC;

(j) except to the extent applicable Laws require a longer retention, maintain and require its subcontractors to maintain, complete and accurate accounting records relating to Work performed or provided and Actual Costs incurred in connection with performance of the same, including records of the time spent and materials used by Subcontractor or such subcontractor in providing the Work in accordance with generally accepted accounting principles in the United States, as set forth in pronouncements of the Financial Accounting Standards Board (and its predecessors) and the American Institute of CPAs, for a period of three (3) years after Final Completion of a Unit, except that records relating to Sales Tax for such items shall be retained for seven (7) years. Upon Contractor's written request, Subcontractor shall allow Contractor or Contractor's representative to inspect and make copies of such records and interview Subcontractor Personnel in connection with the Work; *provided that* any such inspection shall take place during regular business hours no more than once per year and Contractor provides Subcontractor with at least ten (10) Business Days advance written notice, and the purpose of any such audit shall only be for verification of Actual Costs and Subcontractor shall not be required to keep records of or provide access to those of its costs covered by the allowances, fixed rates, lump sums or of costs which are expressed in terms of percentages of other costs. Contractor may exercise its audit rights hereunder by using its personnel or by using an independent certified public accounting firm licensed to perform audits in accordance with the laws of New York. Any such third party independent certified public accounting firm shall conform in fact and in appearance to generally accepted auditing standards and auditing and independence standards established by the American Institute of Certified Public Accountants, and, where applicable, the U.S. Securities and Exchange Commission. Prior to the commencement of the audit, any such third party firm must sign Subcontractor's standard confidentiality agreement and also

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

demonstrate that they comply with both the Contractor's and Subcontractor's data handling policies and security standards. In addition, third party auditors and accountants must comply with all local and national data privacy laws. Contractor shall not be permitted to engage an independent auditor that is compensated on a contingency basis;

(k) obtain Contractor's written approval, which consent shall not be unreasonably withheld or delayed, prior to entering into agreements with or otherwise engaging any Person, including all subcontractors and Affiliates of Subcontractor, other than Subcontractor's employees or Seconded Personnel, to perform any Work and provide any Deliverables to Contractor (each such approved subcontractor or other third party, a "**Permitted Subcontractor**"); provided, however, that such subcontractors and Affiliates of Subcontractors that are currently performing, or have performed, Work as of the Effective Date shall be deemed to be Permitted Subcontractors. Contractor's approval shall not relieve Subcontractor of its obligations under the Agreement, and Subcontractor shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Subcontractor's own employees. Nothing contained in this Agreement shall create any contractual relationship between Contractor and any Subcontractor Permitted Subcontractor;

(l) require each Permitted Subcontractor to be bound in writing by the confidentiality and intellectual property assignment or license provisions of this Agreement, and, as applicable, to sign a proprietary information agreement in the form attached to this Agreement as Exhibit 2.02(i) or enter into an intellectual property assignment or license agreement in a form that is satisfactory to Contractor;

(m) obtain Contractor's written approval (which consent shall not be unreasonably withheld or delayed) prior to terminating executory contracts relating to the procurement of commodities, construction materials and direct material costs; and

(n) act as Contractor's agent with respect to (i) implementing existing vendor and executory contracts and (ii) obtaining and implementing all procurement contracts, in each case in accordance with the following requirements:

(i) in such instances when Subcontractor is performing contracting services (for goods or services) on behalf of Contractor as Contractor's agent, Subcontractor shall issue inquiries and contracts for goods or services in Contractor's name utilizing Contractor's forms, as may be authorized by Contractor and from sources approved by Contractor. Subcontractor shall also perform contract administration and management services with respect to such contracts, including, without limitation, invoicing review and submittal to Contractor for direct payment by Contractor to such subcontractors;

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(ii) Subcontractor undertakes and agrees at all times during the term of this Agreement in which it is acting as Contractor's agent:

- (A) to use its best endeavors to perform its role as agent of Contractor with all due care and diligence and to seek to improve Contractor's goodwill;
- (B) to not to allow its interests to conflict with the duties that it owes to Contractor under this Agreement and any applicable Laws and to promptly report to Contractor any request or demand for any undue financial or other advantage of any kind received by Subcontractor in connection with the performance of this Agreement;
- (C) to act in accordance with sound commercial principles in its relations with vendors and subcontractors and potential vendors and subcontractors (including as to assessing, and where appropriate obtaining independent assessments of, their financial stability) and to do nothing which Contractor considers could be prejudicial to its goodwill or commercial interests; and
- (D) not, without prior approval of Contractor (and then only acting strictly on the Contractor's express instructions), on behalf of Contractor, to take part in any dispute or commence or defend any court or other dispute proceedings or settle or attempt to settle or make any admission concerning any such proceedings.

(iii) all procurement by Subcontractor on behalf of Contractor will be on Contractor's standard terms and conditions for the purchase of goods and services as varied from time to time (a copy of the current version of which is attached as Exhibit H);

- (A) Subcontractor shall, in the course of dealing with vendors and prospective vendors, ensure that Contractor's terms and conditions are incorporated into and do not substantially deviate from Contractor's terms and conditions in every purchase order for the purchase of goods and/or services; and
- (B) Subcontractor shall not, without Contractor's prior written consent, make or give any representations or warranties beyond those contained in, or agree to terms which deviate substantially from, Contractor's standard terms and conditions referred to in sub-clause (iii) unless previously approved by Contractor in writing; and

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(iv) Subcontractor shall be responsible for (A) obtaining any necessary import licenses or permits necessary for the entry of any goods to the Site or their delivery to Subcontractor, as applicable and (B) any customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of any such goods, and such costs shall be considered Actual Costs for purposes of this Agreement.

If, any time during the term of this Agreement, Subcontractor does not act in accordance with the obligations in this **Section 2.02(n)** when performing Work as Contractor's agent, Contractor shall have the right to terminate the agency relationship and take over any Subcontractor's Scope yet to be performed.

Section 2.03 Subcontractor agrees that, regardless of the location at which Subcontractor Personnel perform the Work, Subcontractor Personnel shall not be employees of Contractor and will not be on Contractor's payroll. Subcontractor is responsible for all Subcontractor Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits; provided, however, that Subcontractor shall not be liable for any obligations related to the payment of compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits in respect of Seconded Personnel.

Section 2.04 During the Term and while performing the Work, the Subcontractor Personnel shall follow Contractor's holiday schedule. All costs associated with holidays and vacations shall remain the responsibility of Subcontractor.

Section 2.05 Subcontractor and Contractor each acknowledge, respectively, that nothing in this Agreement shall create a contract of employment for any Subcontractor Personnel or Seconded Personnel, nor guarantee any Subcontractor Personnel or Seconded Personnel employment for any period whatsoever. This Agreement shall not alter the at-will nature of any employment relationship Subcontractor may have with any Subcontractor Personnel or that Contractor may have with Seconded Personnel.

Section 2.06 Subcontractor acknowledges that prompt and timely performance of all Subcontractor obligations, including all timetables, Project Milestones and other requirements in this Agreement and the DOR, is important and Subcontractor shall use all due diligence and all reasonable efforts to meet same. Notwithstanding the foregoing, Subcontractor does not guarantee achievement of Substantial Completion for the Units by or before the applicable Guaranteed Substantial Completion Date despite its good faith efforts to accomplish the same.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Section 2.07 Subcontractor shall provide reporting as required by Law, including all applicable export control Laws then in effect (as more fully described in **Section 22.06**).

Section 2.08 The obligations of Subcontractor under this Agreement shall be performed fully within the United States, unless approved in writing in advance by Contractor.

Section 2.09 If Subcontractor's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Owner, Contractor or their agents, subcontractors, consultants or employees outside of Subcontractor's reasonable control, Subcontractor shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Contractor, in each case, to the extent arising directly or indirectly from such prevention or delay.

ARTICLE III CONTRACTOR'S OBLIGATIONS

Section 3.01 Contractor shall:

- (a) cooperate with Subcontractor in all matters relating to the Work and appoint a Contractor employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of Contractor with respect to matters pertaining to this Agreement (the "**Contractor Subcontract Manager**");
- (b) provide, subject to **Section 2.02(g)**, such access to Contractor's premises, and such office accommodation and other facilities as may reasonably be requested by Subcontractor and agreed with Contractor in writing in advance for the purposes of performing the Work;
- (c) respond promptly to any Subcontractor request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Subcontractor to perform Work in accordance with the requirements of this Agreement;
- (d) comply with all applicable Law in relation to the Work, the use of Contractor Materials and the use of the Contractor Equipment to the extent that such licenses, consents and Law relate to Contractor's business, premises, staff and equipment, in all cases before the date on which the Work is to start;
- (e) provide the Seconded Employees in accordance with the Secondment Agreement for performance of the Work, ~~and~~ ~~Any delay or failure by Contractor to provide the Seconded Employees in accordance with the Secondment Agreement for any reason shall be a breach of a material term of this Agreement; and~~

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(f) transfer Contractor employees and Seconded Employees to Subcontractor in accordance with the resources mapping arrangement set forth in Exhibit G, and, ~~Any~~ delay or failure by Contractor to transfer such Contractor employees and Seconded Employees to Subcontractor in accordance with the resources mapping arrangement set forth in Exhibit G shall be a breach of a material term of this Agreement;

(g) maintain or obtain all permits, licenses, approvals, consents, obligations, required to be obtained and maintained in good standing by Contractor to execute the Work, as more fully described in Exhibit I;

(h) deliver to Subcontractor within ~~five ten~~ (10) Business Days after the Effective Date a Parent Company Guarantee in the form set forth in Exhibit 3.01(h) pursuant to which Westinghouse Electric Company LLC shall guarantee Contractor's payment and indemnification obligations under this Agreement;

(i) (i) maintain all normal security measures currently in place at the Facility to, among other things, allow for the access of Seconded Employees and Subcontractor Personnel to the site utilizing the "JD Edwards" system as of the date of Closing, and for fifteen (15) Days thereafter, in order to assure continuous operation at the Project, and (ii) ~~Contractor shall~~ assure that there will be no lapse in normal operations for access, badging, fit for work, training and site security procedures, and ~~Any~~ failure by Contractor to provide such security measure or assure such continuous access and operation at the Project shall be a breach of a material term of this Agreement.

ARTICLE IV CHANGE ORDERS

Section 4.01 The following, to the extent they impact the obligations of Subcontractor under this Agreement (each, a "**Change**"), shall entitle Subcontractor to a Change Order in accordance with the provisions of this **Article IV**:

(a) an Owner-directed and funded change (whether agreed by Owner to fund or resolved by dispute resolution that Owner to fund) within Subcontractor's Scope and competency;

(b) a Change in Law agreed to by Owner (whether agreed by Owner or resolved by dispute resolution that Owner to fund); *provided*, that where Subcontractor cannot demonstrate a Change in Law, Subcontractor shall also be precluded from claiming that the purported Change in Law is an Uncontrollable Circumstance; and

(c) to the extent affecting Subcontractor, the circumstances that entitle Westinghouse to a Change Order as provided for in section 5.6 of the EPC Contract (relating to Owner identifying additional Witness or Hold Points and Owner being unable

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

to attend an Owner-designated Witness or Hold Points, or an Owner request to attend after the scheduled time for any Witness or Hold Points).

Section 4.02 In the event Contractor:

(a) wishes to assign responsibility to Subcontractor for any (A) design engineering, (B) management of the quality assurance program, (C) procurement and/or fabrication of off-Site modules, (C) procurement of permanent plant engineered equipment or (D) construction scope currently performed by Westinghouse (such as the containment vessel and selected yard tanks), such assignment shall be the subject of a separately negotiated agreement between Contractor and Subcontractor and shall not be the subject of a Change Order under this Agreement;

(b) rejects a proposal by Subcontractor submitted to Contractor pursuant to **Section 2.02(m)**, such rejection shall not entitle Subcontractor to a Change Order under this **Article IV**; and

(c) directs or requests Subcontractor to perform tasks relating to minor repairs or completion of equipment and/or materials (as the case may be) already substantially complete and delivered to the Site, such activities shall be considered within the DOR or Subcontractor's Scope and Subcontractor agrees that performance of such tasks shall not entitle Subcontractor to a Change Order under this **Article IV** nor be the subject of a separately negotiated agreement between Contractor and Subcontractor.

Section 4.03 Upon the occurrence of any of the events set forth in **Section 4.01(a), (b), or (c)**, Subcontractor or Contractor, as applicable, shall provide the other Party with a notice of the occurrence of such event as soon as reasonably practicable under the circumstances after becoming aware of the Change, and Subcontractor shall, as soon as practicable, prepare and submit to Contractor a written estimate relating to the proposed Change, including, to the extent applicable, any projected increase in the Fixed Project Fee, or changes to the Target Scope Cost (VC Summer) or Target Procurement Cost (VC Summer). Such notice shall include (or where not possible, be followed by) information relating to the following as such information becomes available:

(a) details of the effect of the Change on the provisions of this Agreement, including any Exhibits;

(b) changes to the Fixed Project Fee; and

(c) changes to the Target Scope Cost (VC Summer) and/or the Target Procurement Cost (VC Summer).

To proceed with the proposed Change, Contractor and Subcontractor shall agree upon a Change In Work Form that will adjust the Fixed Project Fee, Target Scope Cost (VC Summer) and Target Procurement Cost (VC Summer) in accordance with the principles outlined in **Article VI**. If the Parties cannot reach agreement on the matters listed in the

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Change In Work Form submitted pursuant to this **Section 4.02**, then such matter shall be referred to dispute resolution under **Article XXVII**. For the avoidance of doubt, while the Target Scope Cost (VC Summer) and the Target Procurement Cost (VC Summer) may be increased or decreased by a change in Scope, the Fixed Project Fee shall not be reduced due to any reduction in Scope.

Section 4.04 If Subcontractor wishes to implement a Change to a process or procedure related to performing the Work, Subcontractor shall submit a written request for a Change to Contractor for approval. The request for a Change shall include the information described in **Section 4.02**. Contractor shall review such request for a Change as soon as reasonably practicable and shall approve or reject such request for reasonable cause.

Section 4.05 Any costs invoiced by Subcontractor shall be subject to audit in accordance with the terms of **Section 2.02(h)**, **Section 2.02(i)** and **Section 2.02(j)**.

ARTICLE V

TERM

Section 5.01 This Agreement shall come into effect on the date Contractor receives written confirmation of Closing of the stock purchase acquisition by Westinghouse of Contractor (such date, the “**Effective Date**”); *provided*, however, that the Effective Date shall not take place until the later to occur of (a) the date that is ten (10) Days after Subcontractor receives from Contractor a written Notice instructing Subcontractor to commence Work and (b) the date that the Secondment Agreement is executed and delivered by the Parties. Contractor shall keep Subcontractor informed regarding the status of Closing so as to enable Subcontractor to begin mobilizing its workforce prior to and to commence the Work as of the date of Closing.

Section 5.02 This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Work, unless sooner terminated pursuant to **Article XIV** (*Suspension and Termination*).

ARTICLE VI

FEES AND EXPENSES; PAYMENT TERMS

Section 6.01 In consideration of the provision of the Work by the Subcontractor and the rights granted to Contractor under this Agreement, Contractor shall compensate Subcontractor for performance of the Work on a reimbursable cost plus fixed Fee basis. Subcontractor shall also be entitled to earn an Incentive Fee if Project Milestones are

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

achieved by the Milestone Dates set forth in Exhibit C. Subject to **Article IV** and **Article VII**, payment to Subcontractor of such Fee, the reimbursement of Actual Costs and expenses, including those set forth in Exhibit K and this **Article VI** (as applicable) {and payment to the Subcontractor of the Incentive Fee} shall constitute payment in full for the performance of the Work, and Contractor shall not be responsible for paying any other fees, costs or expenses.

Section 6.02 The compensation for the Work shall be based on Exhibit J, including the rate sheets applicable to Subcontractor's Scope. Rate sheets relating to all other Subcontractor Personnel shall be subject to escalation based on the terms set forth in Exhibit J.

Section 6.03 Contractor agrees to reimburse Subcontractor for all documented and reasonable travel and out-of-pocket expenses incurred by Subcontractor in connection with the performance of the Work; *provided*, that such expenses conform to Subcontractor's standard travel and expense policy, a copy of which is attached as Exhibit K.

Section 6.04 Invoices.

(a) Subcontractor shall identify a bank account to which Contractor shall wire funds as payment for the Work in accordance with this **Section 6.04**.

(i) No later than five (5) Business Days in advance of the date on which payment to craft labor must be made, Subcontractor shall provide Contractor with a written estimate of its Actual Costs attributable to craft labor expected to be incurred within the next week[; *provided that, if Closing occurs mid-week, charges incurred by Subcontractor for craft labor during such stub week shall be included in Subcontractor's first estimate of Actual Costs and paid in accordance with this Section 6.04(a).*]

Contractor shall fund the identified bank account no later than two (2) Business Days before payment to craft labor must be made. On or about the 10th day of each month, Subcontractor shall furnish Contractor with a detailed invoice of all Actual Costs attributable to craft labor for the previous month and chargeable to Contractor under this Agreement. The portion of the invoices paid via this sub-paragraph (a)(i) with respect to craft labor will not require payment by Contractor but shall merely serve as a basis for adjusting the billing for subsequent billing periods. Any amount reflected in the invoice shall be paid by Contractor or refunded by Subcontractor within fifteen (15) days of receipt of such invoice.

(ii) Each month, Subcontractor shall invoice all other Actual Costs (i.e., all other non-craft) and expenses pursuant to Section 6.03. Contractor will pay undisputed amounts of each such invoice within fifteen (15) Days of receipt of such an invoice.

Comment [I3]: Fluor Comment: Fluor cannot support a mid-week Closing. WEC Response: We are pushing for an end of the week Closing, but cannot guarantee it.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(iii) Each month, Subcontractor shall invoice for the Fee {and, if applicable, any Incentive Fee} earned during the previous month. Contractor will pay undisputed amounts of each such invoice within thirty (30) Days of receipt of such an invoice.

(iv) Upon Final Completion, Subcontractor shall submit a statement summarizing previous billings rendered and payments received. Added to such statement, and properly supported by documentary evidence of expenditure, shall be any charges to the total cost of the Work not reported previously. Within fifteen (15) Days after such acceptance, Contractor shall pay Subcontractor all remaining amounts due.

(b) Invoices submitted by Subcontractor pursuant to this **Section 6.04** shall include amounts for (i) Actual Costs (as described in sub-paragraphs (a)(i)-(ii) above), (ii) any expenses incurred in accordance with **Section 6.03**, (iii) any Incentive Fee earned and (iv) subject to this **Section 6.04(b)**, a Fee equal to four percent (4%) of such Actual Costs in each invoice, until the Fixed Project Fee has been paid in full to Subcontractor.

(i) Each invoice shall be submitted electronically, in Microsoft Excel format and shall be supported by one (1) copy of all payrolls and an itemized listing of subcontractor invoices, expense reports and other Actual Costs. Detailed documentation submitted in support of each invoice shall be retained in Subcontractor's files for review, audit and copying by Contractor at its sole discretion in accordance with **Section 2.02(h)**, **Section 2.02(i)** and **Section 2.02(j)**.

(ii) When submitting its invoice upon Final Completion, Subcontractor shall (A) submit a written discharge, in form and substance satisfactory to Contractor, confirming that the total of the final invoice represents full and final settlement of the monies due to Subcontractor for the performance of the Work under this Agreement and (B) submit a waiver against any mechanic's and materialman's liens; *provided* that the waiver shall be conditioned on Subcontractor receiving payment pursuant to the final invoice and (C) if applicable, return all sales tax exemption certificates issued to Subcontractor to Contractor or provide a statement that all such certificates have been destroyed or have expired.

(iii) If, at any time prior to Substantial Completion of the Second Unit, the aggregate value of the Fee {and Incentive Fee} invoiced and paid equals the Fixed Project Fee, all subsequent invoices submitted by Subcontractor under this Agreement will include amounts for Actual Costs and any expenses incurred in accordance with **Section 6.03** only, without any Fee component.

(iv) The amount of Fee {and Incentive Fee} paid will be tracked throughout the duration of the Project. Following Substantial Completion of the Second Unit and processing of all previously issued invoices, the total amount of Fee {and Incentive Fee} paid shall be calculated and if a positive difference between the Fee paid and the Fixed Project Fee exists, Contractor shall notify Subcontractor, Subcontractor shall submit an invoice to Contractor for such amount and Contractor shall pay such

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

invoice within forty-five (45) Days after receipt. If the aggregate amount of total Fee [and Incentive Fee] paid exceeds the Fixed Project Fee, Contractor shall notify Subcontractor, issue an invoice to Subcontractor for such excess amount and Subcontractor shall refund such excess to Contractor within forty-five (45) Days after receipt.

(c) If for any reason Contractor fails to pay Subcontractor for all undisputed sums due and owing by the relevant due date, Subcontractor shall notify Contractor of the overdue payment. If Contractor fails to make payment of any undisputed amount due within thirty (30) Days following the due date, Subcontractor shall provide a second notice to Contractor in writing and Contractor shall pay interest on the amount of such late payment calculated in accordance with the Late Payment Interest Rate which shall accrue from the relevant due date until the date such amount due is paid. If Contractor fails to make payment of the undisputed amount within ~~fifteen-thirty~~ (1530) Days following its receipt of this second notice, Subcontractor has the right to suspend performance of the Work as if Contractor had ordered a suspension in accordance with **Section 14.01**.

Section 6.05 No Acceptance by Payment. Contractor's payment of any invoice does not constitute approval or acceptance of any item or cost in that invoice nor shall Contractor's payment be construed as a waiver of Contractor's right to dispute any item or cost in that invoice or to relieve Subcontractor of any of its obligations under this Agreement. Any amount of an invoice that Contractor disputes shall be resolved in accordance with **Article XXVII**. Once the dispute is resolved, Contractor shall pay any additional amount due or Subcontractor shall refund any amount by which it was overpaid, as applicable, within thirty (30) Days after the date of final resolution.

Section 6.06 Contractor shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Contractor hereunder; *provided, that*, in no event shall Contractor pay or be responsible for any taxes imposed on, or with respect to, Subcontractor's income, revenues, gross receipts, personnel or real or personal property or other assets.

Section 6.07 Without prejudice to any other right or remedy it may have under this Agreement, upon the occurrence and continuance of any of the following events, Contractor, upon notice to Subcontractor in accordance with Section 28.04, may withhold or retain such portion of any payment due to Subcontractor under this Agreement as Contractor deems appropriate in its reasonable discretion to protect fully its rights hereunder under the following circumstances:

(a) Contractor has received a notice of lien from any subcontractor or any other Person claiming payments due with respect to the Work; and/or

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(b) a Subcontractor event of default, as described in **Section 14.02(a)**, shall have occurred hereunder.

ARTICLE VII

COST SAVINGS BONUS

Section 7.01 Subcontractor may be eligible to collect a Scope Cost savings bonus and or a Procurement Cost savings bonus as outlined in this **Article VII**.

Section 7.02 For purposes of calculating cost savings:

(a) the target Scope Cost for this Project ("**Target Scope Cost (VC Summer)**") will be comprised of a good faith estimate of Scope Costs (VC Summer) ~~plus the Fee earned in respect of such Scope Costs (VC Summer)~~;

(b) the target Procurement Cost for this Project ("**Target Procurement Cost (VC Summer)**") will be comprised of a good faith estimate of Procurement Costs (VC Summer) ~~plus the Fee earned in respect of such Procurement Costs (VC Summer)~~;

(c) the target Scope Cost for the US Project in Georgia ("**Target Scope Cost (Vogtle)**") will be comprised of a good faith estimate of Scope Costs (Vogtle) ~~plus the fee earned in respect of such Scope Costs (Vogtle)~~;

(d) the target Procurement Cost for the US Project in Georgia ("**Target Procurement Cost (Vogtle)**"), will be comprised of a good faith estimate of Procurement Costs (Vogtle) ~~plus the fee earned in respect of such Procurement Costs (Vogtle)~~;

(e) the complete Scope Cost for both US Projects combined ("**Complete Scope Cost**") shall be the sum of the Scope Costs (VC Summer) ~~plus the Scope Costs (Vogtle)~~; and

(f) the complete Procurement Cost for both US Projects combined ("**Complete Procurement Cost**") shall be the sum of the Procurement Costs (VC Summer) ~~plus the Procurement Costs (Vogtle)~~.

(g) Contractor will advise Subcontractor of each of the Target Scope Cost (VC Summer) and Target Procurement Cost (VC Summer) figures no later than one hundred twenty (120) Days after the Effective Date via a written notice letter which shall be incorporated into and form a part of this Agreement. The Target Scope Cost (VC Summer) and Target Procurement Cost (VC Summer), as applicable, may be adjusted for Changes pursuant to the provisions set forth in **Article IV**.

Section 7.03 If:

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(a) the Complete Scope Cost is less than the sum of Target Scope Cost (VC Summer) *plus* Target Scope Cost (Vogtle), the Parties will share the savings on a 50/50 basis; and/or

(b) the Complete Procurement Cost is less than the sum of Target Procurement Cost (VC Summer) *plus* Target Procurement Cost (Vogtle), the Parties will share the savings on a 50/50 basis; provided that Subcontractor's share of the Procurement Cost savings will be reduced by the amount (if any) equal to the aggregate amount of termination fees, incidental or consequential damages and similar penalties assessed against Subcontractor due to Subcontractor's election, without Contractor's prior written consent, not to utilize current executory contracts.

Section 7.04 The Complete Scope Cost and Complete Procurement Cost will be tracked throughout the duration of each US Project and cost savings will be calculated following Substantial Completion of the fourth unit of the US Projects and processing of all previously issued invoices.

Section 7.05 Invoicing for Cost Savings. If Subcontractor has achieved any cost savings with respect to the Complete Scope Cost and/or the Complete Procurement Cost, Subcontractor shall issue an invoice for the amount of such cost savings following Substantial Completion of the fourth unit of the US Projects, together with supporting documentation and calculations reasonably acceptable to Contractor, and, subject to **Section 6.04(c)**, Contractor shall pay such invoice within forty-five (45) Days after receipt. If the Agreement is terminated for convenience by Contractor pursuant to **Section 14.03(d)** or for Contractor default pursuant to **Section 14.05**, and in either case, the Project is at least ninety-five percent 95% complete based on the anticipated date for Substantial Completion of the Project, then Subcontractor and Contractor shall calculate the cost savings with respect to the Procurement Costs (VC Summer) as of the date of termination based on the current trending against the Target Procurement Cost (VC Summer). In such case, Subcontractor shall submit an invoice with supporting documentation and calculations and Contractor shall pay such invoice, in each case as set forth in this **Section 7.05**.

ARTICLE VIII

INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP

Section 8.01 Each Party shall remain the owner of its respective Background Information. Contractor shall own all rights, title and interest in and to all Foreground Information. Except with respect to any of Subcontractor's Background Information incorporated therein, Contractor shall own all rights, title and interest in and to the Deliverables, including all Intellectual Property relating thereto. Subcontractor agrees, and will cause its Subcontractor Personnel to agree, that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

are hereby deemed a "work made for hire" for Contractor. To the extent that any of the Deliverables do not constitute a "work made for hire", Subcontractor hereby irrevocably assigns, and shall cause the Subcontractor Personnel to irrevocably assign to Contractor, in each case without additional consideration, all right, title and interest throughout the world in and to the Deliverables, including all Intellectual Property therein, but specifically excluding any Subcontractor Background Information incorporated therein. The Subcontractor shall cause the Subcontractor Personnel to irrevocably waive, to the extent permitted by applicable Law, any and all claims such Subcontractor Personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Deliverables.

Section 8.02 Upon the request of Contractor, Subcontractor shall, and shall cause the Subcontractor Personnel to, promptly take all such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to transfer all rights in and to the Intellectual Property relating to the Deliverables and to assist Contractor to prosecute, register, perfect or record its rights in or to any Deliverables.

Section 8.03 Subcontractor hereby grants Contractor a royalty-free, fully paid up, non-exclusive and perpetual license to use, have used, make, have made, sell, offer to sell, copy, modify (including to create derivative works), have modified, improve, sublicense, perform, display, execute, reproduce, distribute, transmit, import and otherwise exploit any Subcontractor Background Information to the extent incorporated in, combined with or otherwise necessary for the use of the Deliverables or the Foreground Information for the design, construction, operation, maintenance, and licensing of the Units. Contractor hereby grants Subcontractor the right to use Contractor Background Information and Foreground Information solely during the Term to the extent necessary to provide the Work to Contractor. To the extent Third Party Information is used by a Party, the Party incorporating such information shall obtain for the other Party all rights necessary for the design, construction, operation, maintenance and licensing of the Units.

ARTICLE IX PROPRIETARY INFORMATION

Section 9.01 Each Party owns and considers to be proprietary, or is under an obligation to a third party to maintain as proprietary, and treats as secret or confidential, certain technical, business or commercial information in oral, written, electronic or physical form that pertains to this Agreement and each Project, including but not necessarily limited to:

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(a) all information and other materials supplied to or received by a Party that are either marked “confidential”, “proprietary” or the like, or are by their nature intended to be for the knowledge of the recipient alone; and

(b) any information relating to this Agreement, the US Projects and information concerning business transactions and/or financial arrangements of the Contractor and/or between the Contractor that Subcontractor may acquire through performance of its role as Subcontractor under this Agreement or that can be derived from any of the foregoing information (all such information as described in subparagraphs (a) and (b) being “**Proprietary Information**”).

Section 9.02 Subcontractor has signed a separate Proprietary Information Agreement (“**PIA**”) with Westinghouse Electric Company LLC, dated July 7, 2015 and as amended on or about the Effective Date, to include Contractor as a party, which sets out the obligations of each party thereto pertaining to the transfer and use of Proprietary Information. The PIA shall be fully incorporated into and forms an integral part of this Agreement.

ARTICLE X

REPRESENTATIONS AND WARRANTIES

Section 10.01 Each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering;

(b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted hereunder and to perform its obligations hereunder;

(c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of such Party;

(d) it will act in good faith and take decisions in a reasonable manner with respect to each of its obligations in this Agreement; and

(e) when executed and delivered by such Party, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

Section 10.02 Subcontractor represents and warrants to Contractor that:

(a) it shall perform the Work using Personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement;

(b) it is in compliance with, and shall perform the Work in compliance with, all applicable Laws;

(c) Contractor will receive good and valid title to all Deliverables, free and clear of all encumbrances and liens of any kind;

(d) with each invoice it submits, it has performed and provided the Work required for the payment claimed in such invoice; and

(e) (i) none of the Work, Deliverables and Contractor's use thereof infringe or will infringe any Intellectual Property Right of any third party arising under the Law of the United States, and, (ii) as of the date hereof, there are no pending or, to Subcontractor's knowledge, threatened claims, litigation or other proceedings pending against Subcontractor by any third party based on an alleged violation of such Intellectual Property Rights.

ARTICLE XI INDEMNIFICATION

Section 11.01 Subcontractor Indemnity.

(a) Except with respect to a Nuclear Incident, Subcontractor shall indemnify, defend and hold harmless Contractor and Owner, their Affiliates, and their respective partners, shareholders, officers, directors and lenders from and against Third Party Claims and costs and expenses associated therewith (including attorneys' fees) from any bodily injury of or death to natural persons, or damage to or destruction of third party property (i.e., property other than the Facility or other property belonging to Contractor or Owner) to the extent arising from (i) the negligent or willful acts or omissions of Subcontractor or its Key Personnel or Invitees acting within the scope of their employment or for which applicable Law would otherwise hold Subcontractor liable for such acts or omissions, (ii) any Liens arising from nonpayment to any subcontractor in connection with the Work, provided that Subcontractor has been paid in accordance with this Agreement, or (iii) the release on or from the Site of any Hazardous Materials, but only to the extent such release is due to Subcontractor's or a sub-subcontractor or their Personnel's or Invitees' negligence or willful misconduct for Hazardous Materials that Subcontractor or a sub-subcontractor brings to the Site, but only to the extent that such applicable Law would hold Subcontractor liable for such acts or omissions.

Subcontractor's obligations in this **Section 11.01** are further conditioned upon Contractor giving Subcontractor prompt notice of any claims for which it seeks indemnity hereunder (along with documentation which reasonably evidences Subcontractor's responsibility therefor) and Contractor providing such assistance and cooperation in the defense of

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

indemnified claims as Subcontractor shall reasonably request as set forth in more detail in **Section 11.05**.

(b) Subcontractor shall, to the fullest extent permitted by Law, waive, release, indemnify, defend and hold harmless Contractor against any and all Claims in respect of bodily injury or sickness, disease or death of any person employed by or engaged on behalf of Subcontractor arising out of or in connection with this Agreement from any cause whatsoever including, but not limited to, the negligence or breach of duty (whether statutory or otherwise) of Contractor.

(c) Subcontractor shall be liable for, and to the fullest extent permitted by Law, waive, release, indemnify, defend and hold harmless Contractor against any and all Claims in respect of physical loss of or damage to property owned, hired, leased, chartered or borrowed under other agreements by Subcontractor, in each case arising out of or in connection with this Agreement from any cause whatsoever including, but not limited to, the negligence or breach of duty (whether statutory or otherwise) of Contractor.

Section 11.02 Contractor's Indemnity.

(a) Except with respect to a Nuclear Incident, Contractor shall indemnify, defend and hold harmless Subcontractor from and against Third Party Claims and costs and expenses associated therewith (including attorneys' fees) from any bodily injury or death to natural persons, and damage to or destruction of third-party property (i.e., property other than that belonging to Subcontractor) to the extent arising from (i) the negligent or willful acts or omissions of Contractor, Owner or their Personnel or Invitees (other than from Subcontractor or its Personnel or its Invitees) acting within the scope of their employment or for which applicable Law would otherwise hold Contractor or Owner, as applicable, liable for such acts or omissions; and (ii) any contamination of the environment or injury to natural resources as a result of any Hazardous Materials on, at or under the Site to the extent such contamination or injury occurs through the fault, negligence, willful misconduct or strict liability of Contractor, Owner or their Personnel or Invitees. Contractor's obligations in this **Section 11.02** are further conditioned upon Subcontractor giving Contractor prompt notice of any claims for which it seeks indemnity hereunder (along with documentation which reasonably evidences Contractor's responsibility therefore) and Subcontractor providing such assistance and cooperation in the defense of indemnified claims as Contractor shall reasonably request as set forth in more detail in **Section 11.05**.

(b) Contractor shall, to the fullest extent permitted by Law, waive, release, indemnify, defend and hold harmless Subcontractor against any and all Claims in respect of bodily injury or sickness, disease or death of any person employed by or engaged on behalf of Contractor or Owner, including any Seconded Employees, arising out of or in connection with this Agreement from any cause whatsoever including, but not limited to, the negligence or breach of duty (whether statutory or otherwise) of Subcontractor.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(c) Contractor shall be liable for, and to the fullest extent permitted by Law, waive, release, indemnify, defend and hold harmless Subcontractor against any and all Claims in respect of physical loss of or damage to property owned, supplied, hired, leased, chartered or borrowed under other agreements by Contractor or Owner, in each case arising out of or in connection with this Agreement from any cause whatsoever including, but not limited to, the negligence or breach of duty (whether statutory or otherwise) of Subcontractor.

(d) Contractor shall release, indemnify, defend and hold Subcontractor harmless from any and all liabilities of Contractor that arise from pre-Effective Date operations or activities in respect of the Project, the Facility or the Site.

Section 11.03 Subcontractor shall defend, indemnify and hold harmless the Contractor Indemnitees from and against all Losses based on a claim that any of the Work or Deliverables or Contractor's receipt or use thereof infringes any Intellectual Property Right of a third party. In the event any Work or Deliverable so defended is held to constitute infringement or its use is enjoined, Subcontractor shall, at its own expense and option, either: (a) procure for Contractor the right to continue to use such Work or Deliverable; (b) re-perform or replace such Work or Deliverable with substantially equivalent non-infringing Work or Deliverables; or (c) modify the Work or Deliverables so that it becomes non-infringing; *provided*, however, that such Work performed and Deliverable replaced or modified conforms to the requirements of this Agreement. Notwithstanding the foregoing, Subcontractor shall have no obligations under this **Section 11.03** with respect to any claim of infringement or misappropriation of any third party's Intellectual Property right resulting from (i) Subcontractor following the written instructions of Contractor or Owner to use, install, or supply any process, material, or equipment that is the basis for any such claim, or ii) Contractor's or Owner's use of the Work or Deliverables outside of Subcontractor's written specifications or for any purpose other than for the design, construction, operation, maintenance, and licensing of the Units. In each and every such instance, Contractor shall defend, indemnify, and hold harmless Subcontractor from and against any and all claims, losses, damages, costs, and/or expenses associated therewith.

THIS **Section 11.03** IS AN EXCLUSIVE STATEMENT RELATING TO INTELLECTUAL PROPERTY RIGHTS AND ALL THE REMEDIES OF THE PARTIES RELATING TO INFRINGEMENT ACTIONS ARISING PURSUANT TO THIS AGREEMENT.

Section 11.04 Owner's Nuclear Incident Indemnity. Contractor confirms that the following provisions are contained within the EPC Contract with respect to protection of Contractor and Contractor's Interests in the event of a Nuclear Incident:

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(a) Notwithstanding any other provision to the contrary, Owner shall, without cost to Contractor Interests, obtain and maintain “financial protection” and an “indemnification agreement”, for protection against liability for Nuclear Incidents (including master worker coverage), both in such form and amount as shall satisfy the requirements of Section 170 of the Atomic Energy Act of 1954, as amended. In the event that the nuclear liability protection contemplated by Section 170 of the Atomic Energy Act of 1954, as amended, is repealed, changed, or is not renewed, Owner shall maintain in effect, to the extent available on commercially reasonable terms, liability protections through governmental indemnity, limitation of liability and/or insurance of comparable coverage which shall not result in a material impairment of the protection afforded Contractor Interests by such nuclear liability protection which is in effect as of the Effective Date, taking into account the availability and cost of such coverage, customary practice in the United States commercial nuclear utility industry for plants of similar size and character of the Facility and other relevant factors in light of the then existing conditions. To the extent available on commercially reasonable terms, Owner shall ensure that Contractor Interests are included in the omnibus definition of “insured” under such alternate insurance coverage or are otherwise included as an additional insured at no cost to Contractor Interests.

(b) Owner shall prior to the initiation of Work at the Site and without cost to Contractor, obtain and maintain property insurance for protection against liability for Nuclear Incident on the Facility and the existing adjacent nuclear generation facility in a form and amount required by the Nuclear Regulatory Commission and the current customary industry practice from time to time, providing protection against loss or damage to the Facility and the existing adjacent nuclear generation facility. Such insurance shall cover Contractor Interests, as their interests may appear. Owner hereby waives all rights of recovery and subrogation on behalf of itself and its insurers against Contractor Interests for any loss or damage covered by such property insurance during the Work and thereafter, including the deductibles under any insurance policy.

(c) None of the Contractor Interests shall be liable to Owner or its insurers or any other party for (i) any on-Site property (and existing nuclear facility at the V.C. Summer Station) loss or damage due to any nuclear energy hazard, and (ii) losses or damages caused by reason of unavailability of the nuclear power and existing adjacent nuclear station, or by reason of shutdowns of the station or other facilities or service interruptions (including loss of profits or revenue, inventory or use charges, cost of replacement power, cost of capital or claims by customers) or for any other indirect, special, incidental, punitive or consequential loss, damage or injury, whether or not based on any claim or a negligent or faulty act or strict liability due to any nuclear energy hazard. To the extent Owner or its insurers recover damages from a third party for damage due to the nuclear energy hazard to which the foregoing waivers apply, Owner shall indemnify Contractor Interests against any liability which such third party recovers over from Contractor and/or its Subcontractors for any such loss or damage. In the event

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

that Contractor Interest incur any cost, loss, damage or expense arising out of or resulting from a claim by a third party based on Owner's recovery of such damages, Owner shall promptly reimburse Contractor for such cost, loss, damage or expense. As used in this **Section 11.04**, the term "nuclear energy hazard" shall mean radioactive, toxic, explosive or other hazardous properties of "source material", "special nuclear material", or "by-product material" as such terms are defined in the Atomic Energy Act of 1954, as amended. Owner on behalf of itself and its insurers, hereby waives any right of recovery and subrogation against Contractor and Contractor Interest for any loss or damage (whether direct, indirect, consequential or otherwise) whether or not based on any claim or a negligent or faulty act or strict liability, due to any nuclear energy hazard, during the performance of the Work and thereafter.

(d) As used in this **Section 11.04**, the term "on-Site property" means any property at the site of a nuclear facility as defined in the nuclear liability policy for the Site for nuclear liability and indemnity purposes; the term "damage" means loss, damage or loss of use; the term "liable" or "liability" means liability of any kind at any time, whether in contract, tort (including negligence) or otherwise.

(e) The provisions hereof providing for limitations of or protection against Contractor's liability shall survive termination of this Agreement or completion of the Work hereunder.

Section 11.05 The Party seeking indemnification under this **Article XI** shall promptly notify the indemnifying Party in writing of any Third Party Claim and cooperate with the indemnifying Party at the indemnifying Party's sole cost and expense. The indemnifying Party shall immediately take control of the defense and investigation of such Third Party Claim and shall employ counsel of its choice to handle and defend the same, at the indemnifying Party's sole cost and expense. The indemnified Party's failure to perform any obligations under this **Section 11.05** shall not relieve the indemnifying Party of its obligations under this **Section 11.05** except to the extent that the indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure.

(a) The indemnifying Party shall waive any right to protest or challenge its indemnity obligations. The indemnifying Party shall keep the indemnified Party fully informed in the conduct of the proceeding.

(b) The indemnified Party may, at its election, participate in the defense of a Third Party Claim at its sole cost and expense; provided, however, that if (i) the indemnifying Party fails to defend any Third Party Claim, (ii) the Parties mutually agree in writing to allow the indemnified Party to assume the defense of such Third Party Claim and forego any indemnity claimed under this Article, (iii) in the reasonable opinion of legal counsel for the indemnified Party, such Third Party Claim involves the potential imposition of a criminal liability on the indemnified Party, its directors, officers, employees or agents, or (iv) in the reasonable opinion of legal counsel for the

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

indemnified Party, an actual or potential conflict of interest exists where it is advisable for such indemnified Party to be represented by separate counsel, then the indemnified Party shall be entitled to control and assume responsibility for the defense of such Third Party Claim, at the cost and expense of the indemnifying Party (except in the case of (ii) above, in which the indemnified Party agrees to forego the indemnity). The indemnifying Party may, in any event, participate in such proceedings at its own cost and expense.

(c) The indemnifying Party, in the defense of any such litigation, other proceeding or other claim, shall have the right in its sole discretion to settle such Third Party Claim only if (i) settlement involves only the payment of money and execution of appropriate releases of the indemnified Party, (ii) there is no finding or admission of any violation of Law or violation of the rights of the indemnified Party, and (iii) the indemnified Party shall have no liability with respect to such compromise or settlement. Otherwise, no such Third Party Claim shall be settled or agreed to without the prior written consent of the indemnified Party, which shall not be unreasonably withheld.

(d) The indemnified Party and the indemnifying Party (i) shall fully cooperate in good faith in connection with such defense and shall cause their legal counsel and accountants to do the same; (ii) shall make available to the other Party all relevant books, records, and information (in such Party's control) during normal business hours; and (iii) shall furnish to each other, at the indemnifying Party's expense, such other assistance as the other Party may reasonably require in connection with such defense, including making employees of the indemnified Parties available to testify and assist others in testifying in any such proceedings.

ARTICLE XII

LIMITATION OF LIABILITY

Section 12.01 EXCEPT AS OTHERWISE PROVIDED IN **Section 12.03** AND TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE, WHETHER BASED ON CONTRACT (INCLUDING FAULT, NEGLIGENCE AND STRICT LIABILITY), UNDER ANY WARRANTY OR TORT (INCLUDING FAULT, NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, RELATING TO OR ARISING OUT OF THE WORK OR THIS AGREEMENT, FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PENAL OR INCIDENTAL LOSS, DAMAGE OR INJURY, INCLUDING ANY SUCH DAMAGES WHICH RESULT FROM LOSS OF USE OF PROPERTY, EQUIPMENT OR SYSTEMS, LOSS BY REASON OF FACILITY SHUTDOWN OR SERVICE INTERRUPTION, COSTS OF CAPITAL OR EXPENSES THEREOF, LOSS OF PROFITS OR REVENUES OR THE LOSS OF USE THEREOF, OR COST OF PURCHASED OR REPLACEMENT POWER (INCLUDING ADDITIONAL EXPENSES INCURRED IN USING EXISTING POWER FACILITIES) OR FROM CLAIMS OF CUSTOMERS. RELEASES FROM AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

AGREEMENT SHALL APPLY EVEN IN THE EVENT OF THE FAULT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF BLAME ATTRIBUTABLE TO THE PARTY WHOSE LIABILITY IS RELEASED OR LIMITED, AND SHALL EXTEND TO THE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES OF SUCH PARTY.

Section 12.02 EXCEPT AS OTHERWISE PROVIDED IN **Section 12.03** AND TO THE FULLEST EXTENT PERMITTED BY LAW, WITH RESPECT TO A UNIT, NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, SUBCONTRACTOR'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER ARISING OUT OF OR IN CONNECTION WITH THE WORK OR THIS AGREEMENT, WHETHER BASED ON CONTRACT (INCLUDING BREACH, WARRANTY, INDEMNITY, ETC.), TORT (INCLUDING FAULT, NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED AN AGGREGATE AMOUNT EQUAL TO THE FEE PAYMENTS FOR SUCH UNIT THAT HAVE BEEN MADE TO SUBCONTRACTOR AS OF THE DATE OF THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE CLAIM.

Section 12.03 The exclusions and limitations in **Section 12.01** and **Section 12.02** shall not apply to:

- (a) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under **Article VIII** (*Intellectual Property Rights; Ownership*);
- (b) damages or other liabilities arising out of or relating to a party's failure to comply with its obligations under **Article IX** (*Proprietary Information*); or
- (c) a party's indemnification obligations under **Article XI** (*Indemnification*).

ARTICLE XIII

LIENS

Section 13.01 Subcontractor shall keep the Facility, the Site and the Equipment free from Liens, and shall promptly notify Contractor of any known Liens filed against the Facility, the Site or the Equipment and any structures comprising the Facility or located on the Site. If Contractor seeks Subcontractor's indemnity for any Lien, Contractor shall:

- (a) give Subcontractor prompt written notice of any Lien of which it has knowledge, and applicable documentation regarding the Lien;
- (b) cooperate in the defense of litigation relating to the Lien; and

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(c) give Subcontractor sole control of the defense and settlement, to the extent of Subcontractor's liability, for the Lien if Subcontractor confirms in writing an obligation to indemnify Contractor with respect to the Lien.

Section 13.02 Subcontractor shall take prompt steps to discharge or bond any Lien filed against the Facility, any Equipment, and any structures comprising the Facility or located on the Site by any subcontractor based on a claim for payment by Subcontractor in connection with the Work. Subcontractor shall have the option of providing an indemnity to Contractor in lieu of discharging or providing a bond, for up to a nine (9) month period to allow Subcontractor a reasonable time to resolve the cause of the filing of the Lien. If Subcontractor fails to indemnify, discharge or promptly bond any Lien, Contractor shall have the right, upon notifying Subcontractor in writing and providing Subcontractor reasonable time to indemnify, discharge or bond the Lien, to take any and all reasonable actions and steps to satisfy, defend, settle or otherwise remove the Lien at Subcontractor's expense, including reasonable attorneys' fees, costs and expenses. Subcontractor shall have the right to contest any Lien so long as it first provides to Contractor the indemnity described above or it may provide the lien holder, a court or other third Person, as applicable, a bond or other assurances of payment necessary to remove the Lien related to the Work from the Site and the Facility in accordance with the Laws of the State of South Carolina.

ARTICLE XIV

SUSPENSION AND TERMINATION

Section 14.01 Suspension by Contractor for Convenience

(a) Contractor may, without cause, order Subcontractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as Contractor may determine.

(b) Contractor shall continue to meet the payment obligations to Subcontractor during any suspension, delay or interruption for Work actually performed.

(c) During any suspension, Subcontractor shall, at Contractor's cost, take reasonable precautions to protect, store and secure the Work and any Equipment against deterioration, loss or damage and to minimize the charges for the suspension.

(d) Subcontractor shall resume any suspended Work promptly following receipt of notice from Contractor to do so.

(e) Should the Work be so suspended, Subcontractor shall be paid for (i) all Actual Costs incurred prior to the date of suspension and through demobilization and remobilization, including any suspension or cancellation charges by vendors and subcontractors, and (ii) Fee earned for Work performed prior to the date of suspension.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Section 14.02 Termination by Contractor for Cause

(a) Without limiting any other rights that it may have hereunder, Contractor may terminate the Agreement upon notice to Subcontractor if:

(i) Subcontractor is in breach of a material provision of this Agreement and fails to cure the breach within ninety (90) Days following written notice of such breach or, if such breach is not capable of being cured within such ninety (90) Day period, such longer period as is reasonably necessary so long as Subcontractor has commenced the cure within such ninety (90) Day period and thereafter diligently pursues the cure;

(ii) Subcontractor has failed within sixty (60) Days after receiving written notice of a Lien to (x) remove, (y) bond over or (z) provide a written indemnity for any Liens filed against the Facility, the Site or any other property of Contractor or Owner by any of its subcontractors (provided that all of Subcontractor's invoices have been paid in accordance with this Agreement) and has continued to fail to take any of such action within five (5) Business Days following Contractor's notice of its intent to terminate for such failure;

(iii) Subcontractor is Insolvent; or

(iv) Subcontractor abandons the Work for a period in excess of seven (7) Days prior to Final Completion of the Second Unit. Abandonment of the Work shall mean the complete cessation of the Work (unless as a result of a "Stop Work Order" issued by Contractor pursuant to **Section 18.05**) on the Site and/or Subcontractor removes any Key Personnel without prior written notice to Contractor; *provided, however*, that resignation, retirement, death, removal of such Key Personnel at the direction of Contractor or Owner, or other circumstances beyond Subcontractor's reasonable control that leads to the absence of such Key Personnel shall not constitute "removal" for purposes of this **Section 14.02(a)(iv)**.

(b) When Contractor terminates this Agreement for one of the reasons stated in **Section 14.02(a)**, Subcontractor shall be entitled to receive payment of its Actual Costs plus any Fee earned for Work performed in accordance with the relevant specification up to the effective date of termination.

(c) Upon any termination pursuant to this **Section 14.02**, Contractor may at its option elect to: (i) assume responsibility for and take title to and possession of the Facility and Work and Equipment remaining at the Site and Equipment located outside the Site for which payment in full or in part has been made by Contractor; (ii) succeed automatically, without the necessity of any further action by Subcontractor, to the interests of Subcontractor in any or all subcontracts entered into by Subcontractor with respect to the Work (if such subcontracts permit), and shall be required to compensate such subcontractors if acceptable to such subcontractors only for compensation becoming due and payable to such subcontractors for goods and services provided under the terms

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

of their subcontracts with Subcontractor from and after the date Contractor elects to succeed to the interests of Subcontractor in such subcontracts and (iii) request that Subcontractor continue to perform the Work or any portion thereof pursuant to a separate agreement. In the event of any termination pursuant to this **Section 14.02**, Contractor may, at its option, finish the Work and other work by whatever method Contractor may deem expedient.

Section 14.03 Termination by Contractor for Convenience

(a) Contractor may, at any time, terminate this Agreement for Contractor's convenience and without cause.

(b) Upon such termination, the Parties shall have no further liability to one another other than any liability that arose prior to the termination of this Agreement pursuant to this **Section 14.03** and the Parties' obligations under **Section 14.06**.

(c) Should this Agreement be terminated by Contractor for convenience back-to-back with termination by Owner of the EPC Contract for Owner's convenience, Subcontractor shall be paid within forty-five (45) Days after such termination for all Actual Costs incurred through the date of termination and all costs of demobilization, including any cancellation charges by vendors and subcontractors, and Fee earned for Work performed up to the effective date of termination, plus an amount equal to the difference between (i) five percent (5%) of the Actual Costs incurred as of the effective date of termination and (ii) the sum of Fee and Incentive Fee paid through and up to the effective date of termination.

(d) Should this Agreement be terminated by Contractor for convenience solely at Contractor's discretion and the EPC Contract has not been terminated, Subcontractor shall be paid within forty-five (45) Days after such termination for all Actual Costs incurred through the effective date of termination and all costs of demobilization, including any cancellation charges by vendors and subcontractors, any remaining balance of the Fee and any unpaid portion of the Incentive Fee as of the effective date of termination shall be transferred as additional "Fee" to be earned by Subcontractor under the Vogtle EPC Contract. For purposes of calculating any remaining balance of the Fee under this **Section 14.03(d)**:

(i) if termination relates solely to a single Unit of the Project, the Fee shall be seventy-five million dollars (\$75,000,000);

(ii) if termination relates to both Units of the Project, the Fee shall be one hundred fifty million dollars (\$150,000,000),

provided, that the values assigned as the Fee in sub-paragraphs (i) and (ii) above shall be limited to the purpose of calculating the remaining balance of the Fee owed to Subcontractor in a termination for convenience

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

scenario only and shall not have any application outside this **Section 14.03**.

Section 14.04 Suspension and Termination Due to Other Circumstances

(a) In the event that through no act or fault of Subcontractor or a subcontractor, one or more suspensions, delays or interruptions of the Work due to an Uncontrollable Circumstance constitute in the aggregate more than seven hundred thirty (730) Days or more than one hundred eighty (180) Days out of any three hundred sixty-five (365) Day period, or (unless due to a breach by Subcontractor of its obligations under this Agreement or a failure by Subcontractor to comply with applicable Law) an order of a Government Authority having jurisdiction over the Facility which requires the Work to be permanently stopped (or stopped for greater than one year), Subcontractor shall have the right to notify Contractor that it intends to terminate the Agreement. If Contractor does not agree to such termination within thirty (30) Days following Subcontractor's notice, Contractor and Subcontractor shall negotiate a Change in accordance with Article IV to reflect the effect of suspension, delay or interruption of the Work. Subcontractor shall incorporate agreed upon changes in a Change Order.

(b) In the event of termination pursuant to this **Section 14.04**, Subcontractor shall be entitled to receive payment for its Actual Costs incurred for Work performed through the date of termination and all costs of demobilization plus any Fee earned for Work performed up to the effective date of termination.

Section 14.05 Suspension and Termination by Subcontractor

(a) Subcontractor may suspend or terminate this Agreement, as applicable, for the following reasons:

(i) Subcontractor may suspend this Agreement in the event Contractor fails to make payment to Subcontractor in accordance with this Agreement for a period exceeding sixty (60) Days after an undisputed invoice has become due, provided that Subcontractor has provided the notices of overdue payment as required under **Section 6.04(c)**;

(ii) Subcontractor may suspend or terminate this Agreement in the event Contractor is in breach of a material provision of this Agreement and fails to cure the breach within ninety (90) Days following written notice of such breach or, if such breach is not capable of being cured within such ninety (90) Day period, such longer period as is reasonably necessary so long as Contractor has commenced the cure within such ninety (90) Day period and thereafter diligently pursues the cure;

(iii) Subcontractor may suspend or terminate this Agreement in the event of any delay or failure by Contractor to provide the Seconded Employees in accordance with the Secondment Agreement for any reason; or

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(iv) Subcontractor may suspend or terminate this Agreement in the event Contractor is Insolvent unless Contractor has provided a payment and performance bond in the name of Contractor from an issuer having a long-term senior unsecured debt rating of A- or higher by Standard & Poors or A3 or higher by Moody's to secure Contractor's obligations under this Agreement through Substantial Completion, and no other changes to this Agreement have resulted.

(b) Prior to exercising any right to suspend or terminate this Agreement, Subcontractor shall give Owner at least ten (10) Business Days' notice of Subcontractor's intent to suspend or terminate this Agreement and shall not terminate this Agreement if Owner, or its nominee, shall cure all defaults of Contractor with respect to the Facility which are susceptible of being cured by Owner within the applicable cure periods, and if Owner, shall not itself be subject to any bankruptcy or other proceedings which would entitle Subcontractor to terminate this Agreement, then Subcontractor shall not have the right to terminate this Agreement by reason of the existence of default of the Contractor or bankruptcy or other proceedings relating to the Contractor;

(c) Upon suspension of this Agreement pursuant to this **Section 14.05**, Subcontractor shall be entitled to receive payment from Contractor as if it were a suspension for Contractor's convenience under Section 14.01.

(d) Upon termination of this Agreement pursuant to this **Section 14.05**, Subcontractor shall be entitled to receive payment from Contractor as if it were a termination for Contractor's convenience under **Section 14.03**.

Section 14.06 Actions Required of Subcontractor upon Termination of this Agreement. Upon receipt of a notice of termination from Contractor or the issuance of a notice of termination by Subcontractor, in each case in accordance with this **Article XIV**:

(a) Subcontractor shall:

(i) in an orderly manner and consistent with safety considerations, cease operations as directed by Contractor in the notice;

(ii) take, at Contractor's cost unless due to a Termination by Contractor for Cause pursuant to **Section 14.02**, actions necessary, or that Contractor may reasonably direct, for the protection and preservation of the Work (wherever located);

(iii) except for Work directed to be performed prior to the effective date of termination stated in the notice, enter into no further contracts and purchase orders; and

(iv) (A) promptly deliver to Contractor all Deliverables (whether complete or incomplete) for which Contractor has paid, all Contractor Equipment and all Contractor Materials, (B) promptly remove any Subcontractor Equipment located at Contractor's premises or the Site, (C) provide reasonable cooperation and assistance to Contractor upon Contractor's request in transitioning the Work to an alternate

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

subcontractor, and (D) on a pro rata basis, repay all fees and expenses paid in advance for any Work or Deliverables which have not been provided.

(b) Each Party shall (i) return to the other Party all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other Party's Proprietary Information, (ii) permanently erase all of the other Party's Proprietary Information from its computer systems and (iii) certify in writing to the other Party that it has complied with the requirements of this clause; *provided*, however, that Contractor may retain copies of any Proprietary Information of Subcontractor incorporated in the Deliverables or to the extent necessary to allow it to make full use of the Work and any Deliverables.

Section 14.07 Actions Required of Subcontractor upon Termination of the EPC Contract.

(a) Upon receipt from Contractor or Owner (as the case may be) of a notice of termination of the EPC Contract, for any reason other than Owner's default or Owner's termination for convenience:

(i) Owner (or its nominee) will have the option to succeed automatically, without the necessity of further action by Contractor, to all rights and obligations of Contractor under this Agreement related to Contractor scope of supply;

(ii) Owner shall have the right, in its sole discretion, to make any late payment due and owing by Contractor to Subcontractor in order to cure a default by Contractor of a payment obligation, and Subcontractor shall accept such payment by Owner with the same force and effect as if made by Contractor.

(b) Notwithstanding any other provision of this Agreement to the contrary, if this Agreement is terminated by reason of a default of Contractor, or as a result of the rejection or deemed rejection of this Agreement in a bankruptcy proceeding of Contractor, and if, within a reasonable period of time after such termination, the Owner by written notice to Subcontractor, requests Subcontractor to enter into a new contract directly with the Owner, then Subcontractor shall enter into a new contract directly with the Owner (or its nominee) within a reasonable period of time after such notice by the Owner. Such new contract shall commence as of the date of termination of this Agreement and shall be upon all of the terms, covenants, conditions and agreements which were in force and effect on the date of termination of this Agreement. Owner, simultaneously with the delivery of the new contract, shall pay to Subcontractor all sums then due and owing to Subcontractor under this Agreement, plus all costs and expenses incurred by Subcontractor in connection with such termination, less the amount of any pending claim by Subcontractor under any lien bond, payment bond or third party undertaking or indemnity.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Section 14.08 The rights and obligations of the Parties set forth in this **Article XIV** and **Article I** (*Definitions*), **Article VIII** (*Intellectual Property Rights, Ownership*), **Article IX** (*Proprietary Information*), **Article X** (*Representations and Warranties*), **Article XI** (*Indemnification*), **Article XII** (*Limitation of Liability*), **Article XV** (*Insurance*), **Article XVI** (*Non-Solicitation*), **Article XXIII** (*Records*), **Article XXV** (*Anti-Bribery/Kickback*), **Article XXVI** (*Governing Law; Waiver of Jury Trial; Certain Federal Laws*) and **Article XXVII** (*Dispute Resolution*) and any right or obligation of the Parties which, by its nature, should survive termination, cancellation, completion or expiration of this Agreement, will survive any such termination, cancellation, completion or expiration of this Agreement, including but not limited to any expressed limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

ARTICLE XV **INSURANCE**

Section 15.01 Subcontractor Insurance. At all times during the Term, Subcontractor shall procure and maintain the following types and amounts of insurance coverage:

- (a) Workers' Compensation with a limit in the amount required by applicable Law;
- (b) Employment Practices Liability on a project-specific basis with a coverage limit of five million dollars (\$5,000,000) per occurrence and in the aggregate;
- (c) Subcontractor's "Contractor's Pollution Liability" on a project-specific basis, which includes the sudden or accidental release of any material that may be considered a pollutant at or around the Site, as a result of Work done by Subcontractor or any subcontractor – two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) in aggregate. Such policy shall (i) include the Contractor as an additional insured, (ii) provide that it shall be primary to any similar insurance maintained by the Contractor and (iii) provide a waiver of subrogation in favor of the Contractor; and
- (d) Automobile Liability covering all owned, non-owned or hired vehicles with a combined single limit for bodily injury and property damage of two million dollars (\$2,000,000) per occurrence. Such policy shall (i) include the Contractor as an additional insured, (ii) provide that it shall be primary of any similar insurance maintained by the Contractor and (iii) provide a waiver of subrogation in favor of the Contractor.

Section 15.02 All insurance policies required pursuant to Section 15.01 shall:

- (a) be issued by insurance companies with a Best's Rating of no less than A-VII and authorized to do business in the State where the Work is to be performed; and

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(b) provide that such insurance carriers provide Contractor at least thirty (30) Days' prior written notice of material change in policy form or policy limits (other than from an erosion of limits due to the payment of claims), cancellation or non-renewal of policy coverage; *provided*, that, prior to such cancellation, the Subcontractor shall have new insurance policies in place that meet the requirements of **Section 15.01** and **Section 15.02**.

Section 15.03 Subcontractor acknowledges and agrees that:

(a) failure of Subcontractor to provide the required certificate of insurance nor submission by Subcontractor of a Certificate of Insurance not in conformance with the insurance requirements stated herein shall not relieve Subcontractor from its obligation to have in force the required insurance coverages; and

(b) each Party is responsible for any deductibles associated with its policies of insurance or its self-insured retentions, except as otherwise provided in this Agreement.

Section 15.04 Upon the written request of Contractor, Subcontractor shall provide Contractor with copies of the certificates of insurance and policy endorsements for all insurance coverage required by Section 15.01, and shall not do anything to invalidate such insurance. Except as may otherwise may be set forth within this Agreement, the coverages required of the Subcontractor in this **Article XV** shall not be construed in any manner as waiving, restricting or limiting the liability of either Party for any obligations imposed under this Agreement (including but not limited to, any provisions requiring a party hereto to indemnify, defend and hold the other harmless under this Agreement).

Section 15.05 Owner Insurance. Owner has implemented an Owner Controlled Insurance Program (“**OCIP**”) and Subcontractor shall be included as an “Enrolled Party” as set forth in the OCIP.

ARTICLE XVI

NON-SOLICITATION

Section 16.01 During the Term and for a period of twelve (12) months thereafter, neither Party shall, directly or indirectly, in any manner solicit or induce for employment any person who performed any work under this Agreement who is then in the employment of the other Party. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, shall not be construed as a solicitation or inducement for the purposes of this **Section 16.01**, and the hiring of any such employees or independent Contractor who freely responds thereto shall not be a breach of this **Section 16.01**.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Section 16.02 If either Subcontractor or Contractor breaches **Section 16.01**, the breaching Party shall, on demand, pay to the non-breaching Party a sum equal to one year's basic salary or the annual fee that was payable by the claiming Party to that employee, worker or independent Contractor plus the recruitment costs incurred by the non-breaching Party in replacing such person.

ARTICLE XVII
SAFETY; INCIDENT REPORTING

Section 17.01 Environmental, Health and Safety Programs. Subcontractor shall comply with all safety precautions and programs in connection with its performance of the Work under this Agreement, including necessary precautions and programs for the Site and any areas adjacent to the Site under its supervision and/or control. Subcontractor shall comply with applicable workplace safety Laws governing the Work and/or the Site.

Section 17.02 Designated Subcontractor Safety Representative. Subcontractor shall designate a responsible, qualified person in Subcontractor's organization at the Site whose duty shall be the prevention of incidents and injuries and addressing unsafe and undesirable conditions and behavior for each of the following three (3) areas: environmental matters (U.S. Environmental Protection Agency and any applicable state agency), health matters (industrial hygiene and employee health hazard prevention/mitigation) and safety matters, as each area relates to construction activities generally and the Work specifically. One individual may be designated for more than one of these three (3) areas if the individual is qualified in the relevant areas.

Section 17.03 OSHA and Other Laws. Subcontractor shall provide notices and comply with applicable workplace safety Laws, including the Occupational Safety and Health Act ("OSHA") and provisions of the Americans with Disabilities Act relevant to workplace safety. Subcontractor shall maintain the logs required under OSHA.

(a) Subcontractor shall comply with all OSHA and regulatory standards or state plan equivalent applicable to the Work, including those requiring pre-employment testing of Subcontractor Personnel, such as, but not limited to, pulmonary testing, blood testing, urine testing, hearing testing, respirator fit testing, drug screening, and/or applicable medical surveillance testing; provided, however, that Subcontractor shall not be liable for any such testing obligations in respect of Seconded Personnel.

(b) Subcontractor shall comply with Contractor's safety programs and/or any Site specific safety plans which Owner has reviewed and accepted.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Section 17.04 Worksite Safety.

(a) Subcontractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to Persons and property resulting from the Work, including:

(i) Subcontractor or Subcontractor employees and other Persons performing the Work and any Persons who may be affected by the performance of the Work;

(ii) the Equipment to be incorporated into the Facility, whether in storage on or off the Site or under the care, custody or control of Subcontractor or any of its subcontractors; and

(iii) other property at or adjacent to the Site, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.

(b) Subcontractor shall erect, maintain or undertake, as required by existing conditions and the performance of the Agreement, reasonable safeguards for the safety and protection of Persons and property.

(c) Subcontractor agrees to provide to Contractor the name, title and phone number of its emergency contact person prior to the commencement of the Work.

Section 17.05 Dangerous Materials. When the use or storage of explosives or other dangerous materials or equipment or unusual methods are necessary for the Work, Subcontractor shall exercise utmost care and carry on its activities only under the supervision of properly qualified personnel. Subcontractor shall notify Contractor prior to bringing any explosives onto the Site.

Section 17.06 Safety Conscious Work Environment

(a) Protected Activity. To the extent required by applicable Law, Subcontractor and Subcontractor Personnel shall comply with the requirements of Section 211, "Employee Protection" of the Energy Reorganization Act of 1974, 42 U.S.C. §5851, as amended, and 10 C.F.R. §50.7, "Protection of Employees Who Provide Information" and 29 C.F.R. §24, which prohibit Nuclear Regulatory Commission (NRC) licensees or their contractors or subcontractors from discriminating against an employee for engaging in protected activities. Discrimination includes discharge, or other adverse or retaliatory action that relates to compensation, terms, conditions, and privileges of employment; and protected activities include raising nuclear safety or quality issues internally to licensee, contractor or subcontractor management or directly to the NRC.

(b) Safety Conscious Work Environment. Subcontractor shall demonstrate its commitment to and maintain a Safety Conscious Work Environment ("SCWE") and shall follow Contractor's or Owner's SCWE program for Work at the Site. A SCWE program is one in which Subcontractor and all Subcontractor Personnel, Seconded Personnel and

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[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

the personnel of its lower-tier suppliers and subcontractors are informed and are entitled and encouraged to raise safety and quality concerns to Subcontractor's management, to Contractor or to Owner without fear of retaliation or other discrimination. Nothing herein is intended to be construed to inhibit or otherwise prevent any Subcontractor Personnel, Seconded Personnel or other person from communicating directly with any federal or state agency, including without limitation the NRC and/or the U.S. Department of Labor ("DOL"), regarding a safety or quality concern or any other matter.

(c) Notice of Personnel Concerns. Subcontractor shall promptly (but in no event later than five (5) Business Days) notify Contractor after any concern is received by Subcontractor or brought to Subcontractor's attention from Subcontractor Personnel (or former Subcontractor Personnel), any Seconded Personnel or the personnel (or former personnel) of its lower tier suppliers or subcontractors of: (i) an allegation in connection with the Work which is not performed at the Site of discrimination or retaliation because of engagement in protected activities; ~~or~~ (ii) notice of filing of a Section 211 complaint with the DOL related to the Work but which is not performed at the Site; or (iii) notice of an investigation related to the filing of an allegation or Section 211 complaint by the NRC or ~~the U.S. Occupational Safety and Health Administration~~ OSHA related to the Work but which is not performed at the Site.

(e)(d) Investigation of Personnel Concerns. Contractor has an established employee concerns program and Subcontractor shall promptly but no later than within one (1) Business Day advise Contractor of any and all employee concerns or allegations related to nuclear safety or quality or any allegations that include a charge that there has been discrimination or retaliation for engaging in protected activity related to the Work at the Site. Contractor shall promptly and aggressively investigate, or, if Subcontractor or its lower tier supplier or subcontractor has an established employee concerns program, Contractor, at its discretion, may delegate the responsibility to investigate to Subcontractor or its lower tier supplier or subcontractor concerns related to nuclear safety or quality or allegations that include a charge that there has been discrimination or retaliation for engaging in protected activity which are raised to the Subcontractor or its lower tier supplier or subcontractor or the employee concerns program. If Contractor delegates the responsibility to investigate, Subcontractor shall promptly and aggressively investigate, or ensure that its relevant lower-tier supplier or subcontractor promptly and aggressively investigates, any and all such delegated concerns, ~~allegations that include a charge that any Subcontractor Personnel, Seconded Personnel or its lower tier supplier or subcontractor personnel (or former personnel) have been discriminated or retaliated against for engaging in protected activity.~~ In the case in which Contractor conducts the investigation, Subcontractor and each relevant lower-tier supplier or subcontractor, shall cooperate fully with Contractor to assure a complete investigation of such concern or allegation, including providing Contractor with access to Personnel and any information that Subcontractor includes in any report Subcontractor may prepare or which may be prepared by the NRC, the DOL or OSHA, and shall provide Contractor with a full written

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

description of any action which may be taken in response to any such allegation or complaint.

(d)(e) Further Information; Audit. If Subcontractor requires further information or clarification regarding these requirements or Contractor's expectations, it is Subcontractor's responsibility to contact Contractor to seek such information and/or clarification of the SCWE policies or programs. Contractor and Owner shall have the right to audit the effectiveness of such programs not less than once every twelve (12) months during the term of this Agreement. If Contractor determines through any such audit that there are deficiencies in the implementation and practice of the SCWE program, Subcontractor shall undertake appropriate corrective actions to Contractor's reasonable approval.

(e)(f) Material Breach. Any breach of this **Section 17.06** shall be deemed a material breach of the Agreement. In the event that the NRC imposes a civil penalty against Contractor or Owner as a result of Subcontractor's breach of these provisions, such civil penalty shall be considered by the Parties to be direct damages and not consequential, special or indirect damages under this Agreement, and Subcontractor shall indemnify Contractor and Owner, as the case may be, in the amount of any such civil penalty.

(f)(g) Flow-Down Requirement. Subcontractor shall include the foregoing provisions into each of its lower-tier subcontracts for the performance of nuclear safety or quality work in connection with this Agreement, and Subcontractor shall be responsible for ensuring compliance by its lower-tier subcontractors.

Section 17.07 Cooperation in Governmental Investigations and Inspections. Subcontractor and its subcontractors shall provide reasonable assistance to Contractor and Owner in responding to requests and inspections by any Government Authority for information in connection with the Work involving Subcontractor or its subcontractors. Subcontractor shall provide the NRC the facilities, furnishings, conveniences and access set forth in 10.C.F.R. §50.70 and shall take good faith efforts to keep confidential the presence of any representative of the NRC at the Site as provided in 10.C.F.R. §50.70(b)(4).

Section 17.08 Audit. To the extent permitted by applicable Law, and in response to specific and identifiable concerns, Subcontractor shall permit Contractor and/or Owner to review and copy Subcontractor's documents related to those specific and identifiable safety and ~~health~~ quality concerns at the Site.

ARTICLE XVIII

QUALITY ASSURANCE

Section 18.01

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(a) In accordance with the PQAP, Subcontractor shall implement and comply with the Contractor's existing quality assurance programs (which may either be the PQAP or such other quality assurance program capable of being audited to the requirements of the PQAP) for its Work consistent with the nuclear safety quality classification of the Work. Subcontractor audit reports shall be made available for review by Contractor and Owner or their authorized representatives. At its own cost, Owner or its authorized representative may participate in scheduled audits of Subcontractor performed by Contractor. Contractor may make changes to its quality assurance programs at any time and shall (a) promptly inform Subcontractor of any such changes; (b) prior to implementing any PQAP changes directly impacting Subcontractor's activities, provide Subcontractor with the opportunity to review and provide comments to such PQAP changes; (c) to the extent that such changes are required by a Governmental Authority, provide Subcontractor with an equal period of time to implement such changes as provided to Contractor by the relevant Government Authority; *provided* that in all other instances implementation by Subcontractor of such changes shall be immediate.

(b) Subcontractor shall be responsible for the execution of all construction related and construction support related quality control activities, including mechanical, electrical, civil, welding, instrumentation and control (I&C), piping, hanger, hydro/pneumatic test, HVAC, coatings, receipt, and NDE inspections. Subcontractor shall also provide inspection/oversight services of the batch plant, the civil laboratory, and the Measuring and Test Equipment laboratory. In addition, Subcontractor shall be responsible for quality engineering services related to inspection planning and implementation of nonconforming material control process. Execution of the quality control activities shall be Subcontractor's responsibility and includes the following:

- (i) performing inspections in accordance with the PQAP, including ASME and non-ASME inspections;
- (ii) training and qualification of the quality control Personnel;
- (iii) inspection planning by quality engineers;
- (iv) interfacing with the Project construction and quality teams regarding day-to-day priorities of the quality assurance-control inspection force;
- (v) interfacing with the Project construction and quality teams regarding improvement of efficiencies and effectiveness of quality control deliverables;
- (vi) interfacing with Contractor regarding potential program deficiencies or improvement areas;
- (vii) developing and implementing corrective actions for condition reports assigned to Subcontractor's Scope; and
- (viii) adjusting staffing levels as necessary to support field activities.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Section 18.02 Cooperation with the NRC.

(a) Subcontractor shall permit the NRC to inspect records, premises, activities and basic components as necessary to accomplish the purposes of 10 C.F.R. Part 21, including permitting the NRC the opportunity to inspect records pertaining to basic components that relate to the identification and evaluation of deviations, and the reporting of defects and failures to comply, including any advice given to purchasers or licensees on the placement, erection, installation, operation, maintenance, modification, or inspection of a basic component.

(b) Subcontractor shall comply with the provisions of 10 C.F.R. Part 21 and 10 C.F.R. Part 50.55 as defined in the PQAP, and Subcontractor shall include in each contract with its first tier subcontractors to perform any of the Work or to furnish any Deliverable, at the Site or elsewhere, and that are subject to the provisions of 10 C.F.R. Part 21 and 10 C.F.R. Part 50.55 a provision stating that such subcontractor shall comply with the provisions of 10 C.F.R. Part 21 and 10 C.F.R. Part 50.55.

(c) For any Work being performed under Subcontractor's quality program, Subcontractor shall provide Owner and Contractor with copies of all notices and other documentation that Subcontractor may disclose to the NRC pursuant to 10 C.F.R. Part 21 or 10 C.F.R. Part 50.55 concurrently with such disclosure to the NRC (or, if concurrent disclosure is not practical, as soon as reasonably practicable following such disclosure).

(d) Subcontractor shall require that each of its first tier subcontractors provide Owner and Contractor with copies of all notices and other documentation that such subcontractor or its sub-subcontractors, as applicable, may disclose to the NRC pursuant to 10 C.F.R. Part 21 or 10 C.F.R. Part 50.55 concurrently with such disclosure to the NRC (or, if concurrent disclosure is not practical, as soon as reasonably practicable following such disclosure).

Section 18.03 Access and Audits at Subcontractor's Facilities.

(a) During working hours, Contractor and/or Owner and their authorized representatives shall have the right of access to Subcontractor's premises and working facilities for quality assurance and quality control activities and audit activities (including oversight and inspection). Subcontractor shall provide Contractor and/or Owner and their authorized representatives with necessary information and assistance to carry out quality assurance and quality control activities and audit activities (including oversight and inspection).

(b) Quality assurance and quality control activities at Subcontractor include activities necessary to address quality issues which may arise at sub-suppliers. In cases where Subcontractor incurs additional cost due to Contractor's request to perform additional quality assurance and quality control activities beyond these activities, Subcontractor shall be entitled to a Change pursuant to **Article IV**.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(c) Subcontractor shall implement measures necessary to be taken to ensure compliance with this Agreement where such measures are identified as a result of a quality assurance audit or surveillance carried out by Contractor's and/or Owner's authorized representatives. The rights of access described above are subject to restrictions which may be identified by Subcontractor related to access to Proprietary Information, additional costs for access beyond routine audits and Witness Points, reasons of national security or access by foreign nationals.

Section 18.04 Witness Points and Hold Points.

(a) Contractor shall identify the Witness Points and Hold Points relating to Equipment or services to be provided by Subcontractor, and will notify Subcontractor of any Owner-designated Witness Points or Hold Points that Owner shall attend. In cases where Subcontractor incurs additional cost due to Owner's request to add additional Witness Points and/or Hold Points beyond those identified by Contractor, Subcontractor shall be entitled to a Change Order pursuant to **Article IV**.

(b) Work may proceed with and beyond Witness Points in the absence of Owner's or Contractor's (or an authorized representative) participation (as applicable) without a written waiver. Work may not proceed with or beyond Hold Points without a written waiver from Owner or Contractor, as applicable.

(i) If proper notification has been given and Owner or Contractor has responded that it intends to attend the activity that is the subject of the Hold Point, but Owner or Contractor (as applicable) or its authorized representative is unavailable at the designated time, or Owner or Contractor (as applicable) does not respond as to whether or not it intends to attend the activity that is the subject of the Hold Point, the Work shall not proceed and Subcontractor shall be entitled to a Change Order pursuant to **Article IV**.

(ii) Requests by Owner or Contractor (as applicable) to witness tests or conduct surveillance after the scheduled point in time designated for a Witness Point or Hold Point shall be accommodated by Subcontractor only if technically feasible and shall entitle Subcontractor to a Change Order pursuant to **Article IV**.

(c) Witnessing of tests or other surveillance by Owner or Contractor (as applicable) shall be at such Person's expense. If Owner or Contractor (as applicable) performs the surveillance or elects not to perform a surveillance, such surveillance or waiver shall not relieve Subcontractor of its obligations under this Agreement.

(d) Items displaying any nonconformance with, or deviation from, the relevant specified design requirement shall be repaired or re-worked, as appropriate, and shall be re-inspected to verify conformance to the specified requirements. A nonconformance which represents significant conditions adverse to quality submitted for Owner's or Contractor's approval, as the case may be, shall include the identification of the cause of the nonconformance and the corrective action to prevent recurrence.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Section 18.05 Contractor's Right to Inspect and Stop Work.

(a) Contractor shall have the right to have its authorized representatives inspect the Work in order to assure that the Work complies with the requirements of this Agreement, including the PQAP. Inspection by Contractor shall not be deemed to be supervision by Contractor of Subcontractor and shall not relieve Subcontractor of any responsibility for performing the Work in accordance with this Agreement. Any acceptance or approval by Contractor shall not be deemed to constitute final acceptance of same by Owner, but shall be only for the purpose of assuring that the Work complies with this Agreement. Contractor may report to Subcontractor any unsafe or improper conditions or practices observed at the Site for action by Subcontractor in correction or enforcement.

(b) If Contractor's inspection reveals any non-compliance or any other defects in any portion of Work, then Subcontractor shall, promptly upon its receipt of written notice from Contractor, take such actions as are required with respect to such defective Work in accordance with the PQAP. If Subcontractor is not taking the actions required with respect to defective Work in accordance with the PQAP, Contractor shall have the right to cause Subcontractor to take corrective action. Subcontractor shall submit an invoice to Contractor in the amount of Actual Costs incurred in connection with any activities undertaken pursuant to this **Section 18.05(b)**.

(c) If Subcontractor fails to take corrective action for defective Work as required under sub-paragraph (b) above, then Contractor, by written order, may order Subcontractor to stop performance of the portion of the Work affected thereby, until the cause of such order has been eliminated. In addition, Contractor, by written order, may order Subcontractor to stop performance if the activities of Subcontractor at the Site reasonably appear to Contractor to cause or threaten to cause danger to life or damage to property. Subcontractor shall not be entitled to a Change Order for stop Work orders properly issued pursuant to the terms of this **Section 18.05(c)**.

(d) Prior to commencement of the Warranty Period, in the event Contractor or Owner requests that any Work be uncovered to determine whether it is deficient, Subcontractor shall be entitled to a Change Order pursuant to **Article IV** unless the Work is found to be deficient. If the Work is found to be deficient, Subcontractor shall repair or replace it or take other appropriate corrective action; *provided*, however, Subcontractor shall not be entitled to collect any Fee in connection with such amount of Actual Costs and such amount of Actual Costs shall constitute Scope Costs (VC Summer) or Procurement Costs (VC Summer), as applicable, for purposes of calculating the Complete Scope Costs and/or Complete Procurement Costs (as applicable) under **Article VII**. During the Warranty Period, the provisions of **Article XI** shall apply to any Work that does not conform to the Warranties.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

ARTICLE XIX

TESTING

Section 19.01 The scope of testing associated with this Article covers that testing which takes place for each Unit at the Site. The testing that shall be performed on-Site consists of Construction and Installation Tests, preoperational tests, startup tests and the performance test.

(a) During construction, Subcontractor completes the Construction and Installation Test program in which various electrical and mechanical tests are performed including, but not limited to, the following:

- Cleaning and flushing;
- Hydrostatic testing;
- Checks of electrical wiring;
- Valve testing;
- Energization and operation of equipment (Subcontractor shall provide support to Contractor in performance of these tests); and
- Calibration of instrumentation.

(b) During construction Subcontractor completes the building of components associated with the various systems. The associated piping, wiring, equipment, and controls are verified to be installed in accordance with approved final design drawings. Construction and Installation Tests are performed and all appropriate documentation and exceptions to construction verification or tests, or incomplete tests shall be recorded as Turnover exceptions. On a system basis, completion of this program demonstrates that the system is ready for component testing and/or preoperational testing, as applicable.

Section 19.02 Subcontractor's obligations with respect during or with respect to during the preoperational tests, the startup tests and the performance test shall be limited to providing assistance to Contractor (including technical support) and Subcontractor shall not bear any liability related to, the preoperational, startup or performance Tests.

ARTICLE XX

STAGES OF COMPLETION

Section 20.01 Turnover.

(a) Turnover refers to the sequential mechanical completion of each system and structure of a Unit. "Turnover" of a system or structure shall occur upon the satisfaction of the following conditions:

(i) such system, structure or component (A) shall be mechanically and electrically sound; (B) shall have been cleaned out as necessary to perform the Construction and Installation Tests for such system or structure; and (C) the subsystems

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

comprising such system, structure or component shall have been checked for alignment, lubrication and electrical continuity and hydrostatic and pneumatic pressure integrity; and

(ii) the Construction and Installation Tests for such system or structure shall have been completed such that Contractor can confirm that the criteria for the Construction and Installation Tests have been met.

(b) Notice and Acceptance of Turnover. When Subcontractor believes the provisions of **Section 20.01(a)** have been satisfied with respect to each system or structure, Subcontractor shall deliver a written notice of such determination to the Contractor with sufficient detail to enable Contractor to determine whether Subcontractor has achieved such requirements. Turnover of such system or structure shall be deemed to have occurred within ten (10) Business Days following delivery of such determination to Contractor, unless within such ten (10) Business Days period, Contractor has notified Subcontractor in writing of why it disagrees that Turnover has occurred, in which case (and without prejudice to Subcontractor's right to submit a Claim) Subcontractor shall take such corrective actions as are necessary and resubmit its written notice of determination to Contractor in accordance with this **Section 20.01(b)**.

(c) Risk of Loss.

(i) Subcontractor shall be responsible for and obligated to replace, repair or reconstruct, and to furnish any system or structure furnished by Subcontractor under this Agreement which is lost, damaged, or destroyed, to the extent that such loss or damage does not arise out of or result from a Nuclear Incident, prior to the Turnover of such system or structure (the "**Risk of Loss Date**"), to the extent (i) proceeds of the Builder's All-Risk insurance policy maintained pursuant to **Article XV** by Owner have been paid for damage to such system or structure unless (ii) other proceeds are available to finance such replacement, repair or reconstruction and Contractor or Owner, as applicable, shall permit such proceeds to be used to finance such replacement, repair or reconstruction. Contractor assumes all responsibility for such loss, damage or destruction following the Risk of Loss Date and Subcontractor is released from all such liability thereafter.

(ii) Risk of loss to Equipment that Subcontractor removes from the Facility or from the Site for repair, replacement or refurbishment under the Equipment warranty described in **Section 21.01** shall transfer to Subcontractor at the time of its loading on the carrier at the Facility. Contractor shall reassume the risk of loss upon completion of such replacement, refurbishment or repair services.

Section 20.02 Substantial Completion.

(a) "Substantial Completion" for a Unit shall have occurred upon satisfactory completion of a performance test, the deemed completion of a performance test or the payment of performance liquidated damages by Contractor under the EPC Contract, in any case as notified in writing by Contractor to Subcontractor.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(b) Contractor shall notify Subcontractor when the provisions of **Section 20.02(a)** have been satisfied.

Section 20.03 Final Completion.

(a) “Final Completion” of a Unit shall be deemed to have occurred upon the completion of the Final Completion punch list and the other Work required under the EPC Contract and such unit attains “placed in service” status for the purposes of the Owner, with the exception of obligations under any warranty.

(b) Contractor shall notify Subcontractor when a Unit has achieved Final Completion.

**ARTICLE XXI
WARRANTY**

Section 21.01 Equipment Warranty. Subcontractor shall, for the protection of Contractor, demand from all vendors and subcontractors from which Subcontractor procures machinery, equipment or materials or services, warranties and guarantees which align with Subcontractor’s obligations under **Section 21.02** with respect to such machinery, equipment, materials or services, which shall be made available to Contractor to the full extent of the terms thereof. **SUBCONTRACTOR’S LIABILITY WITH RESPECT TO MACHINERY, EQUIPMENT AND MATERIALS OR SERVICES OBTAINED FROM VENDORS OR SUBCONTRACTORS SHALL BE LIMITED TO PROCURING SUCH WARRANTIES AND GUARANTEES FROM SUCH VENDORS OR SUBCONTRACTORS AND RENDERING ALL REASONABLE ASSISTANCE TO COMPANY FOR THE PURPOSE OF ENFORCING THE SAME, EVEN IN THE EVENT OF THE FAULT, NEGLIGENCE (WHETHER ACTIVE, PASSIVE, JOINT OR CONCURRENT), STRICT LIABILITY OR OTHER THEORY OF LEGAL LIABILITY OF SUBCONTRACTOR AND ITS OFFICERS, DIRECTORS, EMPLOYEES, LICENSORS, AGENTS, PARTNERS AND RELATED ENTITIES AND THEIR PARTNERS AND RELATED ENTITIES (THE “FLUOR ENTITIES”).** All costs incurred by Subcontractor in performing such Work shall be reimbursable under **Section 6.01**.

Section 21.02 Work Warranty.

(a) Subcontractor warrants that the Work shall be performed by qualified persons and using competent professional knowledge and judgment and shall be free from defects in workmanship and materials, conform to, and be of the kind and quality described in this Agreement and the Specifications, perform in the manner specified and conform to Good Industry Practices and the requirements of this Agreement (the “**Work Warranty**”).

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(i) If any portion of the Work fails to comply with the Work Warranty and Contractor promptly notifies Subcontractor of such non-conformance along with evidence which reasonably demonstrates Subcontractor's culpability, Subcontractor shall promptly re-perform, repair or replace the non-conforming Work.

(ii) The decision to re-perform, repair or replace shall be made by Contractor. Removal and reinstallation of any non-conforming Work shall be performed by Subcontractor, and costs incurred by Subcontractor in connection with such re-performance, repair, replacement, removal and reinstallation (as applicable) shall be considered Actual Costs. Subcontractor shall submit an invoice to Contractor in the amount of such Actual Costs; provided, however, Subcontractor will not be entitled to collect any Fee in connection with such amount of Actual Costs and such amount of Actual Costs shall constitute Scope Costs (VC Summer) or Procurement Costs (VC Summer), as applicable, for purposes of calculating the Complete Scope Costs and/or Complete Procurement Costs (as applicable) under **Article VII**.

(iii) The Work Warranty Period shall commence upon the date Substantial Completion of a Unit is achieved and shall expire on the date that is twenty-four (24) months after that date for such Unit (the "**Work Warranty Period**").

(b) At Contractor's option, Work relating to the Work Warranty may be deferred until the time of the Unit's next regularly scheduled maintenance outage and the Warranty provisions hereunder shall apply notwithstanding that such outage occurs after the end of the Work Warranty Period. If Subcontractor advises Contractor that deferral of such Work can reasonably be expected to result in damage to the Unit and/or Equipment which occurs after Subcontractor's advice and results from deferral of such Work, Contractor may elect to use the Unit and/or any Equipment at its risk.

Section 21.03 Warranty of Title. Subcontractor represents and warrants that the Work, including the materials furnished by it and its subcontractors that become part of the Facility or are furnished to Contractor as spare parts shall be legally and beneficially owned by Contractor free from any Liens (other than any Liens created by the actions of Contractor, including non-payment). In the event of any nonconformity with this warranty, Subcontractor, at its own expense, upon written notice of such failure, shall indemnify, defend and hold harmless Contractor and Owner from the consequences of such defect in title and such obligations shall survive the expiration, cancellation or termination of this Agreement.

Section 21.04 Limitations and Disclaimers.

(a) THE WARRANTIES AND GUARANTEES AND RELATED REMEDIES SET FORTH IN THIS **Article XXI** ARE EXCLUSIVE AND ARE CONTRACTOR'S SOLE REMEDY WITH RESPECT TO NON-CONFORMING EQUIPMENT OR WORK AND ARE IN LIEU OF ALL OTHER WARRANTIES AND RELATED REMEDIES WHETHER STATUTORY, EXPRESS OR IMPLIED

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

(INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE IN TRADE) AND WHETHER CLAIMS BY CUSTOMER ARE BASED IN CONTRACT OR IN TORT (INCLUDING FAULT, NEGLIGENCE OR STRICT LIABILITY).

(b) Notwithstanding the foregoing provisions of this **Article XXI**, Subcontractor shall have no liability hereunder for non-conformance or failure of materials or performance that results, in whole or in part, from:

(i) operation of the Equipment outside of the design basis of the Equipment or integrated system;

(ii) alteration, abuse or misuse of the Equipment by Persons other than Subcontractor, its subcontractors and the employees and agents of either;

(iii) any operation or maintenance of the Equipment that is not in accordance with the Unit Operating Procedures and Maintenance Procedures;

(iv) following Turnover of a system or structure, improper use, or abnormal handling, storage, operation or maintenance of the Equipment or material therein, or operation outside the guidelines of the Specifications, including employment at any time for purposes other than those for which such Equipment and material are intended, or under other abnormal conditions or incompetent supervision; and

(v) operation by personnel not qualified.

ARTICLE XXII

QUALIFICATIONS AND PROTECTION OF ASSIGNED PERSONNEL

Section 22.01 Screening Measures. Contractor has established a fitness for duty and security screening program ("**Screening Measures**") which shall be applied to all newly hired Subcontractor Personnel performing the Work. Contractor's program shall comply with the regulations set forth in the Laws governing new nuclear build construction.

- (a) This Contractor program contains:
- (i) prohibition on the use, transportation, sale or possession of illegal drugs;
 - (ii) prohibition of the use or possession of alcohol beverages on the Site;
 - (iii) requirement that employees be fit for duty at all times while on the Site;
 - (iv) requirement that employees submit to drug and alcohol testing during pre-access screening, for-cause testing, and post event testing, as necessary;

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

- (v) requirement that all employees must immediately report known, suspected, or potential violations of this policy to supervisory personnel or management;
- (vi) requirement that a subset of workers who perform important safety functions be subject to random testing;
- (vii) protection of information and records to assure confidentiality; and
- (viii) requirement that employees consent to a search or inspection of the individual's property while on the Site.

(b) In addition to pre-access screening for drugs and alcohol an identity check and screening for criminal history shall be performed. A law enforcement criminal records check on all potential employees shall be undertaken and shall include:

- (i) verification of identity;
- (ii) a criminal history check of the individual shall be performed; and
- (iii) prior to a final adverse determination, the applicant shall be informed of the basis for potential denial of access to the Site to assure the accuracy of the basis for such denial.

(c) During pre-access screening a probationary period of not to exceed thirty (30) Days shall be granted to allow for the testing and pre-screening to be performed while the employee is put to work.

(d) Seconded Personnel shall be deemed to have successfully completed these Screening Measures and will not need to re-submit to Screening Measures following Closing. Subcontractor shall not be liable for any Screening Measures in respect of Seconded Personnel or that are required by applicable Law to be obtained by Contractor.

Section 22.02 Subcontractor's Personnel.

(a) Subcontractor shall comply with applicable labor and immigration Laws that may impact Subcontractor's Work under this Agreement, including the Immigration Reform and Control Act of 1986 and Form I-9 requirements. Subcontractor shall perform the required employment eligibility and verification checks and maintain the required employment records. Subcontractor shall not be liable for any employment eligibility and verification checks and maintenance of employment records in respect of Seconded Personnel or that are required by applicable Law to be provided by Contractor.

(b) As the Screening Measures are to be undertaken by Contractor, Subcontractor shall not be liable for any Screening Measures in respect of Subcontractor Personnel or Seconded Personnel, or that are required by applicable Law to be obtained by Contractor.

(c) If in doubt whether a suitability, competence or ability concern exists, Subcontractor shall discuss with Contractor the relevant facts and Contractor shall

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

determine, in its sole discretion, whether such Person should be allowed to perform the Work.

(d) Contractor and/or Owner, in their sole discretion, shall have the option of barring from the Site any Subcontractor Personnel whom either Contractor or Owner (as the case may be) determines does not meet the qualification requirements set forth above. Subcontractor, in its sole discretion, shall have the option of barring from the Site any Seconded Personnel whom Subcontractor determines does not meet the qualification requirements set forth above.

(e) Subcontractor and its subcontractors shall comply with the set of work rules detailing the disciplinary action policy and hiring and termination policies which were approved by Owner.

Section 22.03 Training of Employees. Subcontractor represents that all Subcontractor Personnel shall as required be trained regarding environmental, OSHA and NRC requirements and any other matters required by applicable Laws and relevant to the Work. Contractor represents and warrants that all Seconded Employees have been trained regarding environmental, OSHA and NRC requirements and any other matters required by applicable Laws and relevant to the Work. Subcontractor shall not be liable for any acts or omissions of Seconded Personnel to the extent it can be demonstrated that such Seconded Personnel did not receive adequate training by Contractor regarding environmental, OSHA and NRC requirements and any other matters required by applicable Laws and relevant to the Work.

Section 22.04 NRC Whistleblower Provision. Subcontractor and its subcontractors shall comply with the requirements of Section 211, "Employee Protection", of the Energy Reorganization Act of 1975, 42 U.S.C. §5851, as amended; 10 C.F.R. §50.7, "Protection of Employees Who Provide Information" and 29 C.F. R. §24 (collectively, the "Whistleblower Provisions"). Subcontractor shall implement a program and develop procedures to advise all of Subcontractor's and its Major Subcontractors' personnel that they are entitled and encouraged to raise safety concerns to Subcontractor's management, to Contractor, to Owner and to the NRC, without fear of discharge or other discrimination. Subcontractor shall not be liable for any safety issues raised by a Seconded Personnel to the extent it can be demonstrated that such Seconded Personnel's safety concern is based on any work at the Site that preceded the Effective Date.

Section 22.05 Respirator Protection. For any Work at the Site that shall expose any of Subcontractor's or any subcontractor's employees or representatives to sources of radiation or require them to wear respiratory protection, Subcontractor shall require each of these employees and representatives, prior to entering any radiation area or wearing respiratory protection, to undergo a physical examination to determine if occupational

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

radiation exposure or the wearing of respiratory protection should be avoided because of any medical condition or other circumstance, and in addition, to undergo such physical examination as may be required by applicable Law or by any Government Authority having jurisdiction. Subcontractor shall keep a record of the physical examination available for inspection by Contractor and Owner. Contractor shall assist Subcontractor in defining the applicable requirements, if requested. Subcontractor shall not be liable for any radiation or respiratory issues of Seconded Personnel to the extent it can be demonstrated that such issues are traceable to work at the Site that preceded the Effective Date.

Section 22.06 Each Party agrees not to disclose, directly or indirectly transfer, export, or re-export any Proprietary Information, or any direct or indirect products or technical data resulting therefrom to any country, natural person or entity, except in accordance with applicable export control laws. To assure compliance with the export control laws and regulations of the United States Government, specifically the U. S. Department of Energy export regulations of nuclear technology under 10 C.F.R. Part 810 (U.S. Code of Federal Regulations), and the U.S. Department of Commerce export regulations of commercial or dual-use technology under 15 C.F.R. 730 et seq. concerning the export of technical data or similar information to specific countries, locations, or entities, a Party shall not disclose or permit the disclosure, transfer or re-export, directly or indirectly, of any Proprietary Information it receives hereunder that a receiving Party considers to be potentially subject to U.S. export control, or any product or technical data derived from such Proprietary Information, without the prior written permission of the disclosing Party, which may be contingent on additional United States Government approvals. Disclosing Party agrees to accurately identify in writing to receiving Party, prior to disclosure, any Proprietary Information which is subject to U.S. export control, and shall provide accurate export classification information necessary for supporting any applicable required export of such Proprietary Information, including but not limited to, as applicable, the appropriate Export Control Classification Numbers (ECCN), an indication of the applicability or availability of license exceptions or exemptions, and other relevant information as deemed necessary. Unless otherwise notified in writing, export classifications of technology to be disclosed by Contractor and identified in writing to receiving party as subject to U.S. export control shall be deemed to be nuclear technology subject to 10 C.F.R. Part 810 or technology subject to the Export Administration Regulations with the most restrictive classification having a reason for control of NP2 and AT. Receiving Party shall fully comply with all such laws and regulations with regard to the Proprietary Information it receives hereunder and shall cooperate in good faith with the reasonable requests of the disclosing Party made for purposes of its compliance with such laws and regulations. Notwithstanding any other provisions in this Agreement, the obligations set forth in this Section 22.06 shall be binding on the Parties so long as the relevant United States export control laws and regulations are in effect. ~~Subcontractor shall be released, indemnified and held harmless~~

Comment [g5]: Note to Fluor: Open issue. Further discussion on this topic is needed. WEC learned Friday that all CB&I persons on Site are either US persons (citizens or green card holders), from generally authorized countries or covered by the deemed export authorizations submitted by CBI. As discussed previously, a labelling regime is not practical. WEC could consider implementing a technology control program, which could be as simple as providing that only people from the shared list of authorized countries (ie, authorized under applicable regs from DOE and Dept of Commerce) may be allowed access to the Site, unless a "deemed export" authorization is requested in respect of any such person(s). Please advise availability for a call tomorrow (12/21/2015) to discuss.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

~~by Contractor against any Claims arising out of U.S. export control violations which occur, will occur, or have occurred as a result of events prior to Subcontractor having in place a written "technology control plan" for the Facility and, as applicable, for the Project. Subcontractor shall consult with Contractor in the development of such a "technology control plan".~~

ARTICLE XXIII RECORDS

Section 23.01 Maintenance of Records Generally. Notwithstanding anything in **Section 2.02** or this **Article XXIII** to the contrary, Subcontractor shall ensure that its maintenance of records complies with the applicable provisions of 10 C.F.R. §50.71.

Section 23.02 Sales Tax Records. Subcontractor shall provide or provide access to the information, documents, receipts, invoices, and data to Contractor on a monthly basis, or as Contractor may from time to time reasonably request and as may be specifically required by the South Carolina state tax regulations for non-tax exempt items, and otherwise fully cooperate with Contractor in connection with the reporting of (a) any Sales Taxes payable with respect to the Work and (b) any assessment, refund claim or proceeding relating to Taxes payable with respect to the Work. This may include a monthly assessment visit from the South Carolina state tax department to review this information. Subcontractor shall require its Major Subcontractors to provide to Subcontractor all information and data Subcontractor may reasonably request for purposes of complying with this **Section 23.02** and otherwise fully cooperate with Contractor. Subcontractor shall ensure that its contracts with all Major Subcontractors effectuate the provisions of Section 2.02(h), (i) and (j) and this **Section 23.02**. Subcontractor's obligations under this **Section 23.02** shall survive the termination, cancellation or expiration of this Agreement for any reason and shall last so long as is necessary to resolve any and all matters regarding Taxes attributable to the Work. This information is intended solely for the use of tax compliance.

ARTICLE XXIV UNCONTROLLABLE CIRCUMSTANCES

Section 24.01 No Party shall be considered to be in default or in breach of its obligations under this Agreement to the extent that performance of such obligations is prevented, impacted or delayed by any Uncontrollable Circumstance which arises; *provided*, that amounts due and payable for Work performed shall not be excused due to an Uncontrollable Circumstance. Without limiting Subcontractor's right to seek a Change Order, to the extent the Work is affected by an Uncontrollable Circumstance, Subcontractor shall work diligently to cure, remove, otherwise correct, minimize and

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

contain costs and expenses attendant on or arising from each Uncontrollable Circumstance.

Section 24.02 If a Party's performance of its obligations under this Agreement is prevented, impacted or delayed by an Uncontrollable Circumstance, then it shall notify the other Party of the obligations, the performance of which is prevented, impacted or delayed, and the nature and cause of the event in writing within thirty-five (35) Days after the notifying Party or its project director becomes aware of the Uncontrollable Circumstance. The Party affected by an Uncontrollable Circumstance shall provide the other Party with weekly updates (i) estimating its expected duration, the cost of any remedial action, and the probably impact on the performance of its obligations hereunder, (ii) of the actions taken to remove or overcome the Uncontrollable Circumstance and (iii) the efforts taken to mitigate or limit damages to the other Party. The Party affected by an Uncontrollable Circumstance shall also provide written notice to the other Party when it ceases to be so affected.

ARTICLE XXV ANTI-BRIBERY/KICKBACK

Section 25.01 Subcontractor represents, warrants and covenants that neither it nor any of its officers, directors, employees, agents, representatives or subcontractors on its behalf will make or promise to make any gift or payment of money or anything of value, directly or indirectly, to any other person for the corrupt purpose of inducing such other person to misuse his or her position or to influence any act or decision to obtain, retain or direct business in connection with this Agreement.

Section 25.02 Subcontractor shall deliver annually or as requested by Contractor certifications of compliance with respect to this **Article XXV**, as well as other reasonable assurances required by Contractor. Any violation of this **Article XXV** by Subcontractor shall give Contractor the right to terminate this Agreement and such termination shall be deemed a termination for cause pursuant to **Section 14.02** (*Termination by Contractor for Cause*).

ARTICLE XXVI GOVERNING LAW; WAIVER OF JURY TRIAL; CERTAIN FEDERAL LAWS

Section 26.01 The validity, construction, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles thereof relating to conflicts of laws except Section 5-1401 of the New York General Obligations Law.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Section 26.02 EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT.

Section 26.03 Certain Federal Laws. In the performance of Work under this Agreement, Subcontractor and its subcontractors shall comply with applicable Law, including provisions of Executive Order 11246, as amended, relating to equal opportunity and non-segregated facilities, the Fair Labor Standards Act of 1933, the Occupational Safety and Health Act of 1970, and the requirements of the rules, regulations, orders, bulletins and interpretations of the NRC, to the extent applicable to Subcontractor or subcontractors. Subcontractor further agrees to comply with, and agrees to require subcontractors that are subject to such requirements to comply with, Owner's Government Contracting Programs requirements as specified in 13 CFR 125, 48 CFR 42.219-8 and 48 CFR 42.219-9.

ARTICLE XXVII

DISPUTE RESOLUTION

Section 27.01 Claims. A "**Claim**" is any claim, dispute or other controversy arising out of or relating to this Agreement. Claims must be initiated by written notice. The responsibility to substantiate the Claims shall rest with the Party making the Claim. The other Party shall provide reasonable cooperation in making available non-privileged information in its possession or control that is relevant for purposes of substantiating the Claim.

Section 27.02 The Parties agree to the establishment of a dispute resolution board ("**Dispute Resolution Board**" or "**DRB**") to assist in timely, impartial resolution of Claims and other disputes. All Claims and other disputes arising out of or relating to this Agreement shall be governed by this **Article XXVI**, until Substantial Completion of both Units.

Section 27.03 For Claims and other disputes under five million dollars (\$5,000,000), determinations of the DRB shall be binding on the Parties.

Section 27.04 For Claims and other disputes of five million dollars (\$5,000,000) or higher, determinations of the DRB shall be treated as binding on the Parties on an interim basis until Substantial Completion of both Units. Upon Substantial Completion of both Units, either Party may proceed *de novo* with dispute resolution in accordance with **Section 27.17**. Determinations of the DRB will not be admissible in any *de novo* proceedings pursuant to **Section 27.17**.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Section 27.05 For Claims and other disputes of five million dollars (\$5,000,000) or higher, Contractor and Subcontractor shall submit their written acceptance or rejection of the DRB's report concurrently to the other Party and to the DRB within fourteen (14) Days after receipt of the report. Failure by either Party to accept or reject within the specified period shall be deemed acceptance of the report by that Party. If both Parties accept the report, then it shall be final, without qualification. If one or both Parties reject the report, they shall nonetheless treat the report as binding until thirty (30) Days after Substantial Completion of both Units, at which point the report will have no force or effect.

Section 27.06 The process outlined in this **Article XXVII** shall be the exclusive dispute resolution process for all Claims and other disputes under this Agreement and shall be in lieu of the process set forth in **Section 27.17** of this Agreement, until Substantial Completion of both Units. Thereafter, for Claims or other disputes covered by **Section 27.04**, the Parties may proceed as stated in **Section 27.04**.

Section 27.07 Within thirty (30) Days after the Effective Date, each Party shall submit to the other Party for approval the names of its nominees for membership on the DRB. The Parties shall mutually agree on the three members of the DRB. Once constituted, the DRB members shall designate one of them as Chair of the DRB. The DRB shall serve until Substantial Completion of both Units.

Section 27.08 Members of the DRB shall be experienced in the interpretation of contract documents, the resolution of construction disputes, and with complex power plant projects. At least one of the DRB members must be a licensed attorney. To assist the Parties in the review and approval process, nominated members shall provide the following, in addition to the nominee's full name and contact information, to both Parties:

- (a) resume showing construction experience qualifying the person as a DRB member;
- (b) resume showing past DRB participation, if any. This resume will list each DRB assignment separately, and state the name and location of the project, dates of DRB service, name of owner, name of contractor, contract value, nominating party if applicable, names of the other DRB members, and the number of disputes heard;
- (c) all three members of the DRB are to be neutral and must affirm their neutrality, under oath, once the DRB is fully constituted and before the DRB takes any action; and
- (d) disclosure statement describing past, present, and anticipated relationships or financial ties, including indirect relationships through the nominee's full-time employer, if any, to the Project, and with the Parties and with all other entities directly and indirectly involved in this Agreement. Entities indirectly involved include

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Subcontractor, designers, architects, engineers, or other professional service firms or consultants, joint-venture partners, subcontractors of any tier, and suppliers on the Project. The disclosure statement will also disclose close professional or personal relationships with key members of the Parties and these entities.

(e) Neutrality and disclosure is a continuing obligation of all DRB members throughout the life of this Agreement.

(f) Each member of the DRB shall execute non-disclosure agreements as required by the Parties.

(g) No DRB member shall be allowed to act as an arbitrator or appear as a witness in any subsequent arbitration or litigation related to or arising out of the EPC Agreement.

Section 27.09 Once fully constituted, the DRB will visit the Site and meet with representatives of the Parties at periodic intervals and as requested by the Parties. Any discussion and field observation shall be attended by Personnel of the Contractor and Subcontractor.

Section 27.10 Contractor and Subcontractor shall enter into good-faith negotiations to settle a dispute before referring such dispute to the DRB. These good-faith negotiations shall involve full and timely disclosure of each Party's position to the other Party, including the exchange, where applicable, of pertinent supporting records, analyses, expert reports, and similar documentation, and shall proceed without delay following the inception of the dispute. Such good-faith negotiations may involve the solicitation and rendering of a DRB advisory opinion as described in this **Article XXVII**.

Section 27.11 Either Contractor or Subcontractor may refer a dispute to the DRB. The dispute referral shall be made in writing to the DRB Chair with a copy concurrently provided to the other DRB members and the other Party.

Section 27.12 The dispute referral shall concisely define the nature and specifics of the dispute that are to be considered by the DRB and the scope of the determination requested. The DRB Chair shall confer with the Parties to establish a due date for delivering pre-hearing submittals, and a date, time, and location for convening the DRB hearing. Hearings shall be convened, at a location mutually agreed by the Parties. Absent such agreement by the Parties, the DRB shall determine the location of the hearings.

Section 27.13 The procedures governing the hearings shall be established by agreement of the Parties. Absent such agreement, the DRB shall establish such hearing procedures.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Section 27.14 The DRB's determination of a dispute will be formalized in a written report with format as determined by the DRB and signed by all DRB members. The report shall consist of a concise description of the dispute, short statements of each Party's position, findings as to the facts of the dispute, discussion and rationale for the determination, and the determination. The report shall be submitted concurrently to the Parties, no later than thirty (30) Days after completion of the hearing as agreed by all Parties.

Section 27.15 Contractor and Subcontractor shall each bear their respective costs and attorney's fees. Contractor and Subcontractor shall equally bear the cost of the DRB's services.

Section 27.16 Exclusive Resolution Procedures; Equitable Remedies. The procedures specified in this Article shall be the sole and exclusive procedures for the resolution of Claims (except for lien claims which are governed by statute); *provided*, however, that:

(a) each Party acknowledges that a breach by a Party of **Article VIII** (*Intellectual Property Rights; Ownership*) or **Article IX** (*Proprietary Information*) may cause the non-breaching Party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, notwithstanding anything in this Article to the contrary, in the event of such breach or threatened breach, the non-breaching Party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from the court described in **Section 27.17**, in addition to any other remedy to which the non-breaching Party may be entitled at law or in equity, and that such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary; and

(b) a Party may file a complaint in the court described in **Section 27.17** to seek sequestration, garnishment, attachment, or an appointment of a receiver, despite such actions described in sub-paragraphs (a) and (b) above, the Parties shall continue to participate in good faith in and be bound by the dispute resolution procedures specified in this **Article XXVII**.

Section 27.17 Consent to jurisdiction. The Parties agree to the exclusive jurisdiction of the United States District Court for the Southern District of New York or, if such court does not have jurisdiction of the matter, the courts of the State of New York located in the City and County of New York, for any legal proceedings that may be brought by a Party arising out of or in connection with this Agreement or for recognition or enforcement of any judgment or settlement agreement. By execution and delivery of this Agreement, each Party accepts, generally and unconditionally, the jurisdiction of the

[APG]

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Fluor Draft dated 20-22 December 2015

aforesaid court for legal proceedings arising out of or in connection with this Agreement. Each Party hereby waives any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing court on the basis of forum non-conveniens or improper venue. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

Section 27.18 Continuation of Work. Pending the final resolution of any Claim, Subcontractor shall proceed diligently with the performance or provision of the Work and its other duties and obligations and Contractor shall continue to compensate Subcontractor as set forth under this Agreement without diminution of effort; *provided*, that Subcontractor is being compensated for the Work pursuant to the terms of this Agreement, including the provisions of Article VI (*Fees and Expenses; Payment Terms*) and *provided further* that the Parties agree that such duties and obligations can be safely and prudently performed.

ARTICLE XXVIII MISCELLANEOUS

Section 28.01 Each Party shall, upon the request of the other Party, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

Section 28.02 Other than in accordance with **Section 2.02(n)**, the relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

Section 28.03 Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's trademarks, service marks, trade names, logos, symbols or brand names, in each case, without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.

Section 28.04 All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal

[APG]

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Fluor Draft dated 20-22 December 2015

business hours of the recipient, (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid or (e) when delivered by electronic mail to the relevant Party, *provided* that the tracking option on such electronic mail is enabled to provide both a delivery receipt and a read receipt from the addressee. Such communications must be sent to the respective Parties at the addresses indicated below (or at such other address for a Party as shall be specified in a notice given in accordance with this **Section 27.04**).

If to Subcontractor:

100 Fluor Daniel Drive
Greenville, SC 29607

| Phone: ~~713281417-2632688-3059~~
Facsimile: 864 517 1319
Email: john.dempsey@fluor.com

Attention: John Dempsey
Sr Vice President-Project Director

with a copy to:

Fluor Enterprises, Inc.
1 Fluor Daniel Drive, C5-H
Sugar Land, TX 77478

Phone: 281 263 5714
Facsimile: 281 263 4093
Email: stephen.sanford@fluor.com

Attention: Stephen Sanford
Managing General Counsel

If to Contractor:

1000 Westinghouse Drive
Cranberry Township, PA 16066

Phone: 412 374 6700
Facsimile: 724 940 8508
Email: durhamdc@westinghouse.com

Attention: David C. Durham
Vice President, Strategic Projects

[APG]

| **CONFIDENTIAL AND PROPRIETARY**

Fluor Draft dated 20-22 December 2015

with a copy to:

Westinghouse Electric Company LLC
1000 Westinghouse Drive
Cranberry Township, PA 16066

Phone: 412 374 4526
Facsimile: 724 940 8508
Email: sweenemt@westinghouse.com

Attention: Michael T. Sweeney
Sr Vice President and General Counsel

|
If to Owner:

South Carolina Electric & Gas Company
Mail Code 190
Columbia, SC 29218

Phone: 803 217 8097
Facsimile: 803 217 9336

Attention: President

with a copy to:

South Carolina Public Service Authority
One Riverwood Drive
P.O. Box 2946101
Moncks Corner, SC 29461-6101

Phone: 843 761 4087
Facsimile: 843 761 7037

Attention: Chief Operating Officer
(M602)

Section 28.05 For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Schedules, Exhibits and Statements of Work refer to the Sections of, and Schedules, Exhibits and Statements of Work attached to this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The Schedules, Exhibits and Statements of Work referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 28.06 This Agreement, together with all Exhibits and Purchase Orders and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Exhibit or or any other incorporated document, the following order of precedence shall govern: (a) first, Change Orders, in reverse chronological order, (b) second, this Agreement, exclusive of its Exhibits; (c) third, the applicable Purchase Order; and (d) fourth, any Exhibits to this Agreement. The remedies expressed in this Agreement are the sole and exclusive remedies of the Parties whether arising in contract, tort, warranty or otherwise. Subject to **Section 27.16**, all other remedies, whether at law or in equity, are expressly disclaimed and waived.

Section 28.07 Subject to **Section 2.02(k)** and **(n)**, neither Party may assign, transfer or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided*, that, upon prior written notice to Subcontractor, Contractor may assign this Agreement to an Affiliate. No assignment shall relieve the assigning Party of any of its obligations hereunder. Any attempted assignment, transfer or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

Section 28.08 This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

Section 28.09 The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

[APG]

CONFIDENTIAL AND PROPRIETARY

Fluor Draft dated 20-22 December 2015

Section 28.10 This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 28.11 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 28.12 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Remainder of page left intentionally blank.]

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Fluor Draft dated 20-22December 2015

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of
the date first above written.

Fluor Enterprises, Inc.

By _____

Name:

Title:

CB&I Stone & Webster, Inc.

By _____

Name:

Title:

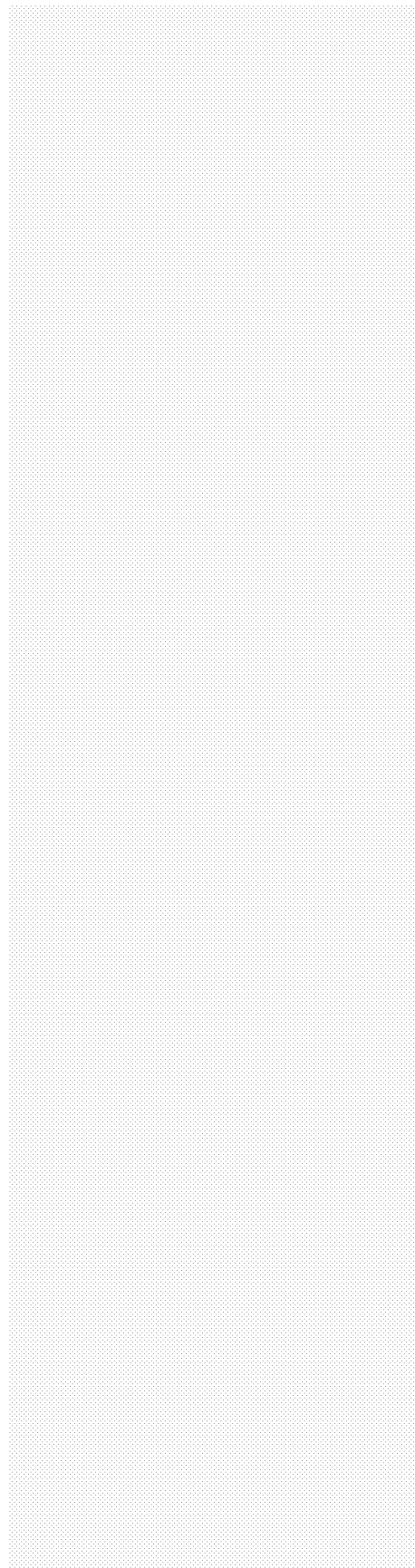
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EXHIBITS

[APG]



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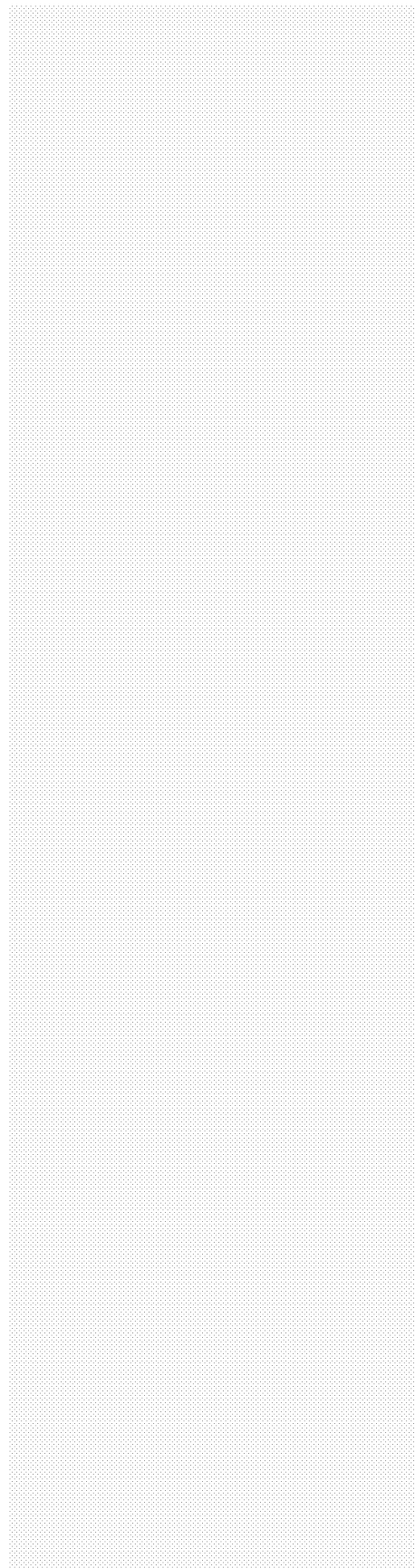
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EXHIBIT A

DIVISION OF RESPONSIBILITY

[To be provided]

[APG]



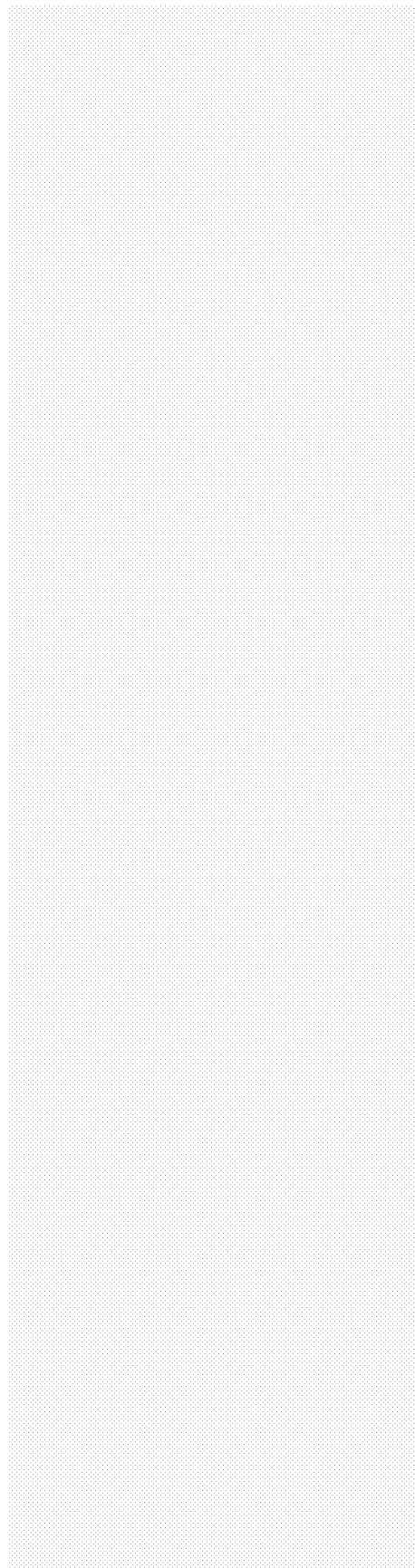
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EXHIBIT B

DESCRIPTION OF FACILITY

[APG]



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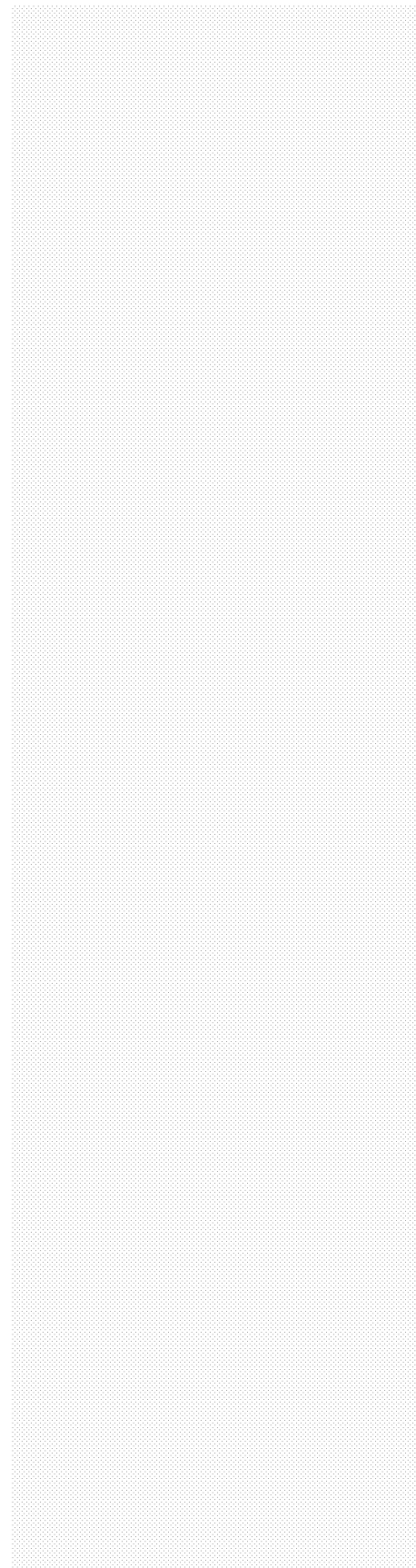
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EXHIBIT C

| **MILESTONES, ~~MILESTONE DATES~~, INCENTIVE FEE**

[To be provided]

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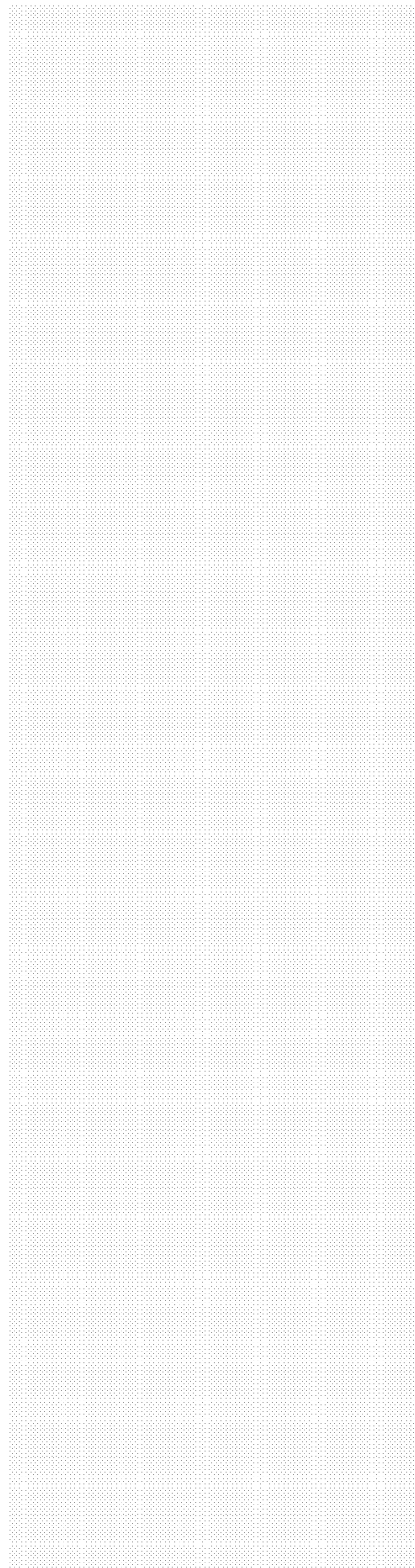
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EXHIBIT D

KEY PERSONNEL

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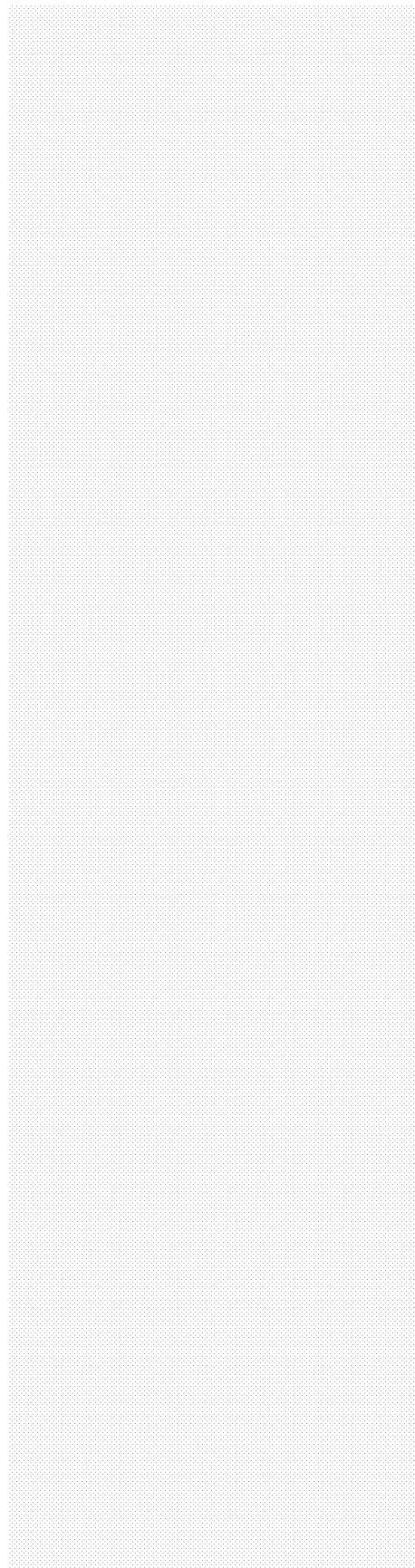
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EXHIBIT E

MAJOR SUBCONTRACTORS

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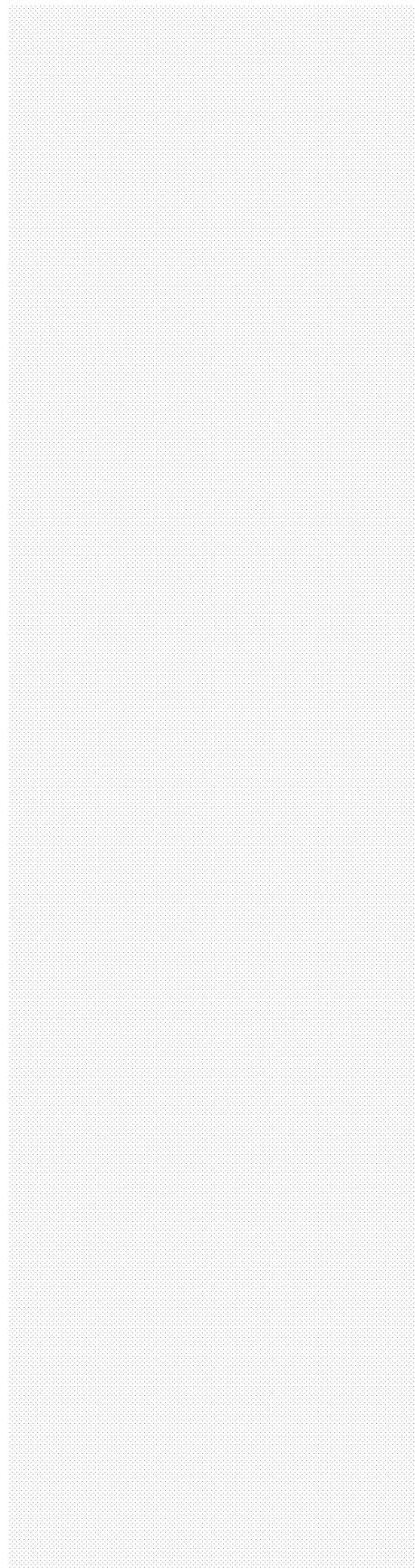
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EXHIBIT F

DESCRIPTION OF SITE

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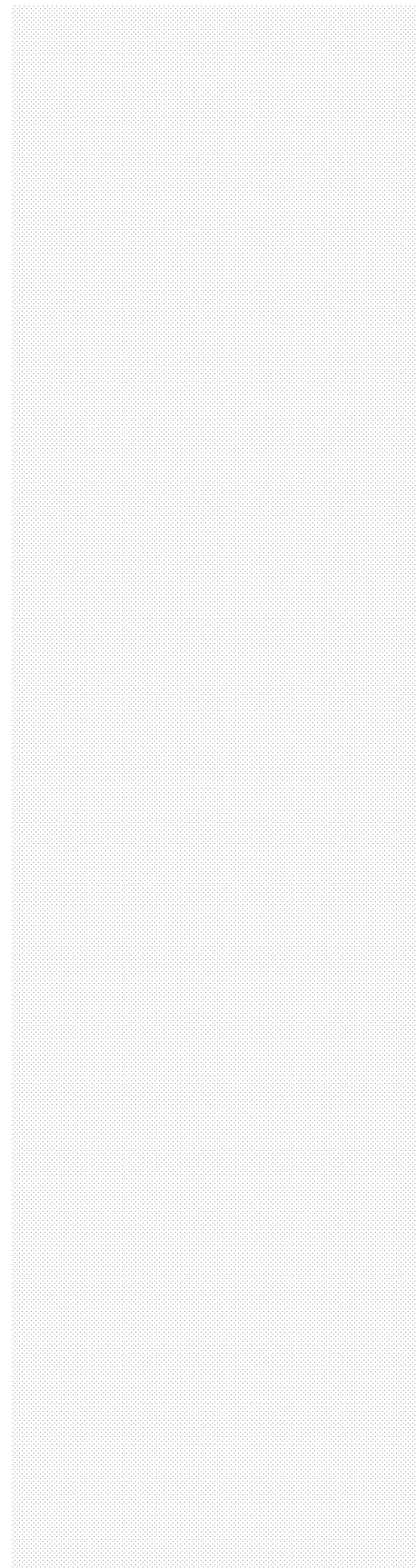
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EXHIBIT G

LIMITS OF AUTHORITY; RESOURCES MAPPING

[To be provided]

[APG]



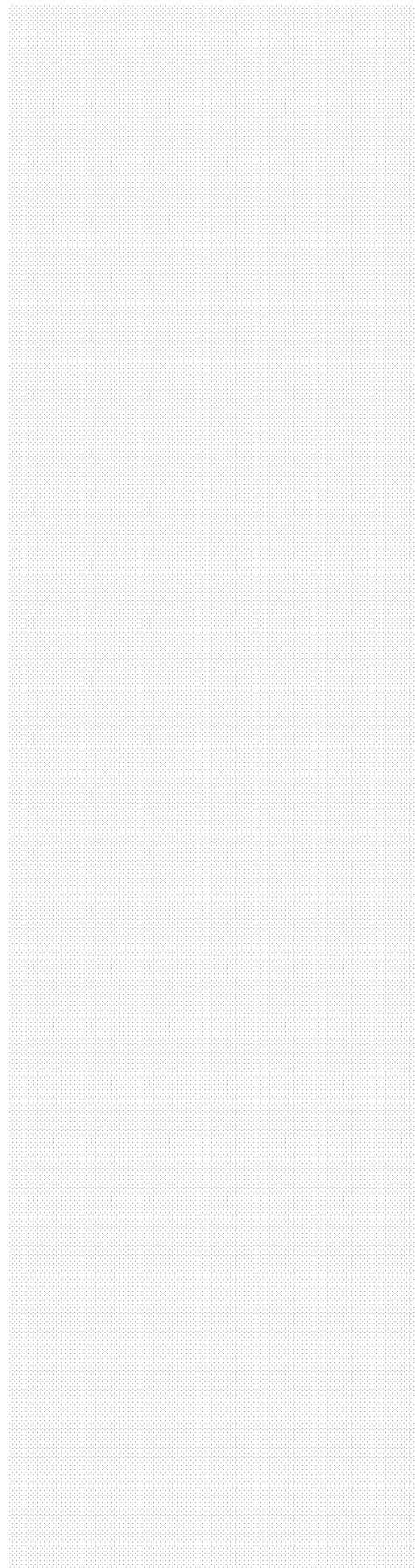
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EXHIBIT H

CONTRACTOR STANDARD PURCHASING TERMS & CONDITIONS

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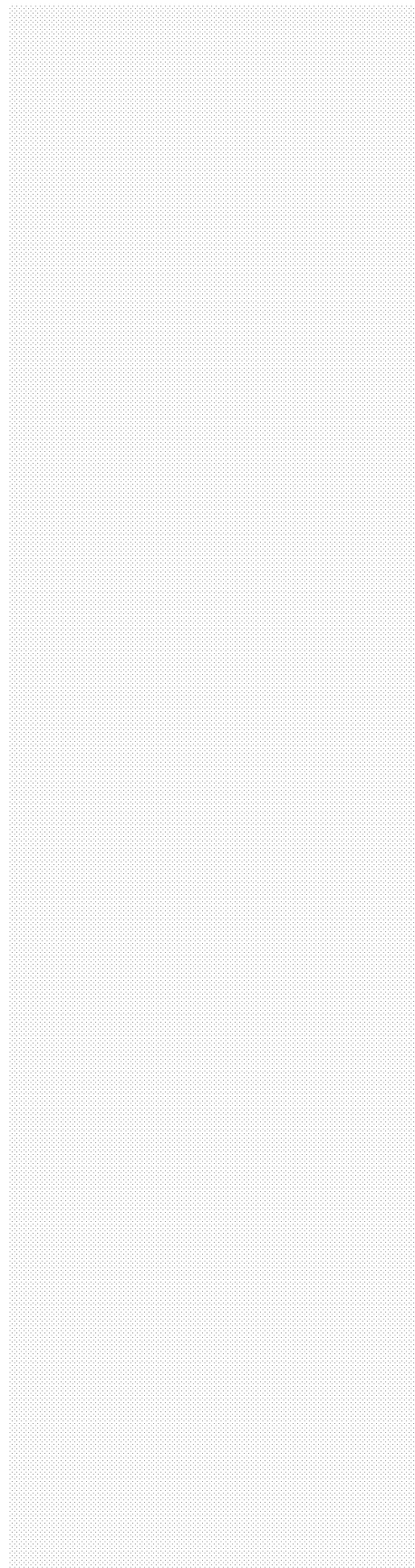
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EXHIBIT I

CONTRACTOR LIST OF PERMITS

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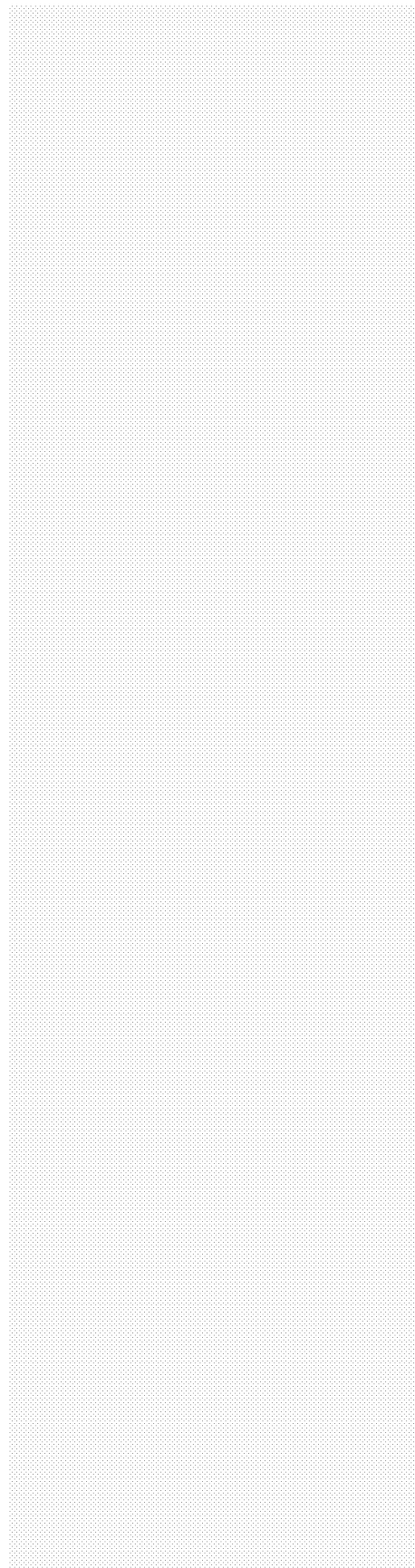
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EXHIBIT J

RATE SHEETS

[to be provided]

[APG]



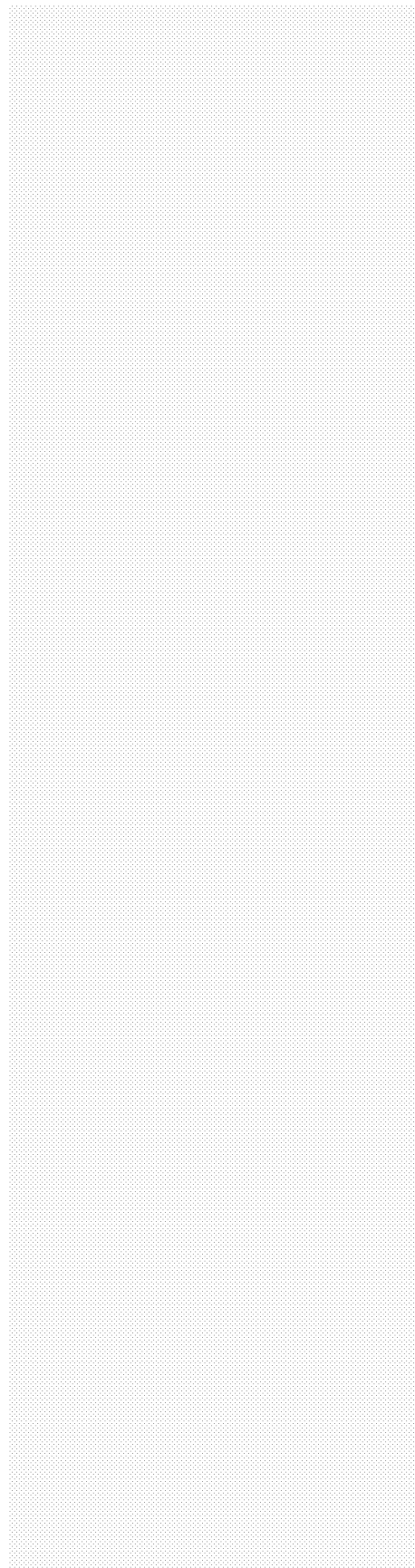
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EXHIBIT K

SUBCONTRACTOR STANDARD TRAVEL & EXPENSE POLICY

[APG]



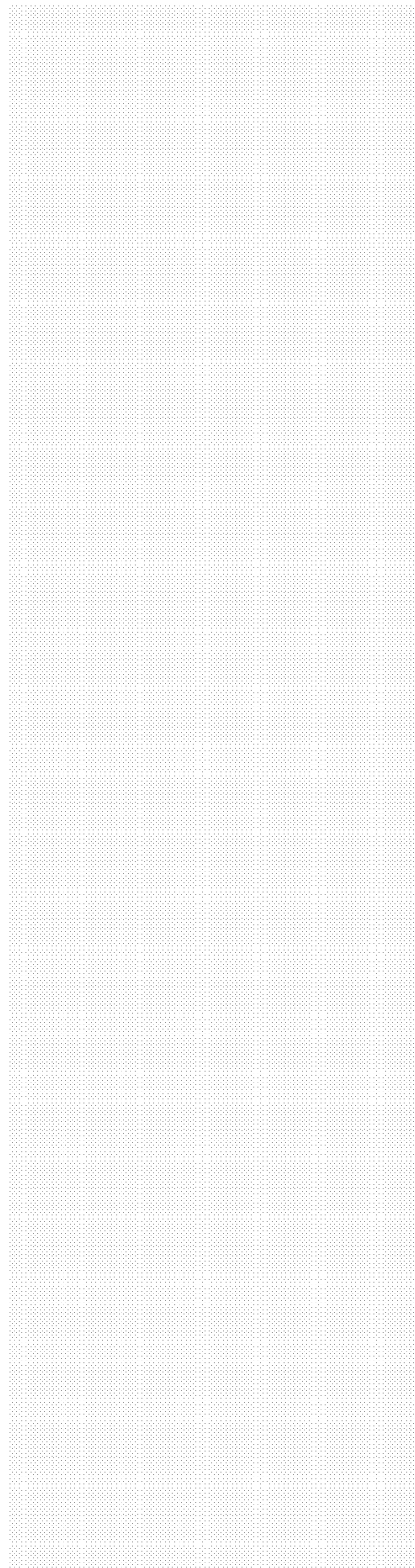
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EXHIBIT L

[NOT USED]

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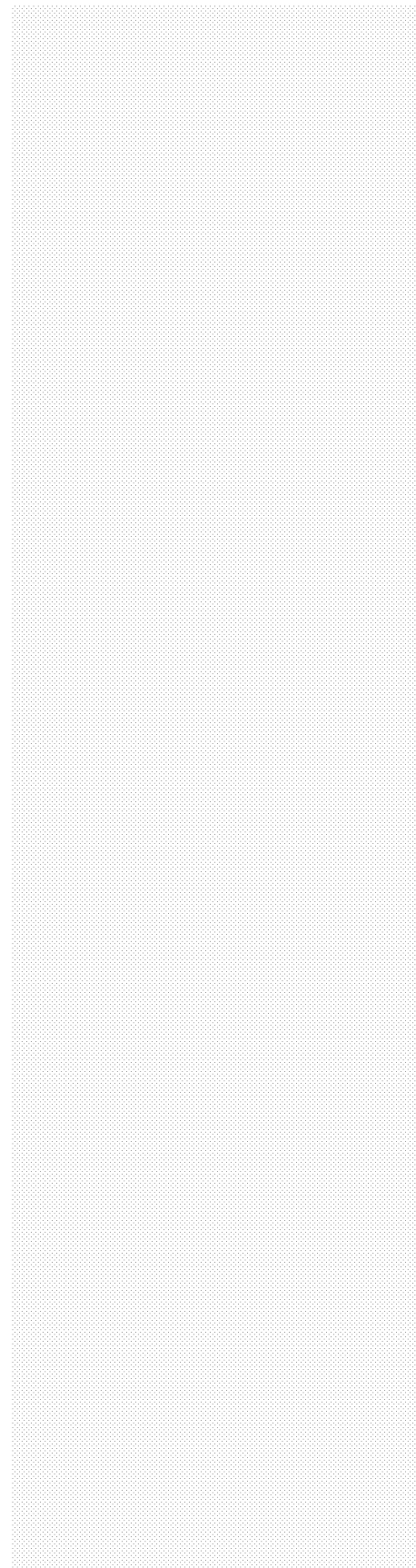
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EXHIBIT M

FORM OF INVOICE

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[APG]



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EXHIBIT N

FORM OF PROPRIETARY INFORMATION AGREEMENT

[APG]

